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COASTAL DEFENSE INITIATIVE OF 1990

JULY 16, 1990.—Ordered to be printed

Mr. JONES of North Carolina, from the Committee on Merchant Marine and Fisheries, submitted the following

REPORT

[To accompany H.R. 2647 which on June 14, 1989, was referred jointly to the Committees on Merchant Marine and Fisheries and Public Works and Transportation]

[Including cost estimate of the Congressional Budget Office]

The Committee on Merchant Marine and Fisheries, to whom was referred the bill (H.R. 2647) to provide for the protection and preservation of coastal and Great Lakes environmental quality for present and future generations, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert the following:

TITLE I—GENERAL PROVISIONS

SEC. 101. SHORT TITLE.

This Act may be cited as the "Coastal Defense Initiative of 1990".

SEC. 102. FINDINGS AND PURPOSE.

(a) FINDINGS.—The Congress finds the following:

(1) Coastal waters are facing increasing threats to their long-term health and integrity through the concentration of growth and development in coastal regions.

(2) Special efforts must be made by all levels of government to achieve, maintain, and protect coastal water quality through strengthened standards and enforcement, improved monitoring and local planning, and increased and predictable funding for these efforts.

(b) PURPOSE.—The purpose of this Act is to forge a common commitment among Federal, State, and local programs to protect and preserve coastal and Great Lakes water quality for present and future generations.

SEC. 103. DEFINITIONS.

In this Act—

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) APPROVED COASTAL ZONE MANAGEMENT PROGRAM.—The term "approved coastal zone management program" means a State coastal zone management program approved by the Under Secretary pursuant to section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455).

(3) CERTIFIED ENVIRONMENTAL AUDITOR.—The term "certified environmental auditor" means an auditor who—

(A) meets applicable industry standards for the conduct of environmental audits; and

(B) is on a list of auditors approved by the Administrator or by a State with an approved auditing program.

(4) CLEAN WATER ACT.—The term "Clean Water Act" means the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.).

(5) COASTAL DEFENSE FUND.—The term "Coastal Defense Fund" means the fund established under section 602.

(6) COASTAL DISCHARGER.—The term "coastal discharger" means a direct or indirect point source discharger into coastal waters that may be subject to the coastal effluent fee system established under section 604, and includes—

(A) a point source that discharges pollutants into coastal waters, except publicly owned treatment works; and

(B) a significant industrial user of any publicly owned treatment works that discharges pollutants into coastal waters.

(7) COASTAL REGION.—The term "coastal region" means—

(A) the Gulf of Maine region, comprised of the coastal waters off of Maine, New Hampshire, and Massachusetts (north of Cape Cod);

(B) the greater New York bight region, comprised of the coastal waters off of Massachusetts, Rhode Island, Connecticut, New York, and New Jersey, from south of Cape Cod to Cape May;

(C) the mid-Atlantic region, comprised of the coastal waters off of New Jersey south of Cape May, Delaware, Maryland, Virginia, and North Carolina;

(D) the South Atlantic and Caribbean region, comprised of—

(i) the coastal waters off of South Carolina, Georgia, and Florida (Atlantic coast); and

(ii) the waters of Puerto Rico and the United States Virgin Islands;

(E) the Gulf of Mexico region, comprised of the coastal waters of the Gulf of Mexico off of Florida, Alabama, Mississippi, Louisiana, and Texas;

(F) the Great Lakes region, comprised of the Great Lakes waters of New York, Pennsylvania, Ohio, Illinois, Indiana, Michigan, Wisconsin, and Minnesota;

(G) the California and Western Pacific region, comprised of—

(i) the coastal waters off of California south of Point Reyes; and

(ii) the coastal waters off of Hawaii, Guam, American Samoa, and the Northern Marianas Islands;

(H) the North Pacific region, comprised of—

(i) the coastal waters off of California, Oregon, and Washington, from Point Reyes to the Canadian border; and

(ii) the coastal waters of Alaska.

(8) COASTAL WATER QUALITY.—The term "coastal water quality" includes the physical, chemical, and biological parameters that relate to the health and integrity of coastal aquatic ecosystems.

(9) COASTAL WATER QUALITY MONITORING.—The term "coastal water quality monitoring" means a continuing program of measurement, analysis, and synthesis to identify and quantify coastal water quality conditions and trends for the purpose of establishing a technical basis for decisionmaking.

(10) COASTAL WATERS.—The term "coastal waters" means—

(A) the waters of the Great Lakes under the jurisdiction of the United States, including their connecting waters, harbors, bays, wetlands, and marshes;

(B) those portions of rivers, streams, and other bodies of water having unimpaired connection with the open sea up to the historic head of tidal influence, including salt wetlands, coastal and intertidal areas, bays, harbors, and lagoons; and

(C) waters of the territorial sea of the United States.

(11) COASTAL ZONE.—The term "coastal zone" has the meaning that term has in section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)).

(12) DISCHARGE OF POLLUTANTS.—The terms "discharge of pollutants" and "discharges of a pollutant" have the meanings those terms have in section 502(12) of the Clean Water Act (33 U.S.C. 1362(12)).

(13) ENVIRONMENTAL AUDIT.—The term "environmental audit" means a systematic, documented, periodic, and objective review of facility operations and practices which is undertaken by an internal or independent certified environmental auditor, for the purpose of—

(A) evaluating compliance with Federal and State water pollution control laws, regulations, or permit requirements; and

(B) evaluating the practices and procedures established by the facility owner or operator to ensure continuing compliance with applicable discharge requirements.

(14) MAJOR DISCHARGER.—The term "major discharger" means an industrial facility that discharges pollutants into coastal waters and is determined by the Administrator to be a major discharger, based upon—

(A) the toxicity of the discharges;

(B) the flow-volume of the discharges;

(C) the presence of conventional pollutants in the discharges;

(D) the projected impacts of the discharges on receiving waters; and

(E) such other factors the Administrator considers important.

(15) MINOR DISCHARGER.—The term "minor discharger" means an industrial facility that discharges into coastal waters and that is not a major discharger.

(16) SIGNIFICANT INDUSTRIAL USER.—The term "significant industrial user" means any nondomestic source of pollutants introduced into a publicly owned treatment works which discharges into coastal waters, that the Administrator determines is—

(A) subject to categorical pretreatment standards under section 307(b) of the Clean Water Act (33 U.S.C. 1317(b)); or

(B) a noncategorical source that has a reasonable potential to adversely affect the operation of a publicly owned treatment works.

(17) SIGNIFICANT NONCOMPLIANCE.—The term "significant noncompliance" means severe or chronic violations of—

(A) effluent limitations or discharge requirements established under the Clean Water Act;

(B) requirements established in a management program approved under section 319 of the Clean Water Act (33 U.S.C. 1329) applicable to coastal waters; or

(C) requirements established in a comprehensive conservation and management plan approved under section 320 of the Clean Water Act (33 U.S.C. 1330);

which result in formal enforcement action being taken by the Administrator or a State.

(18) STATE PERMITTING AUTHORITY.—The term "State permitting authority" means any duly authorized State official administering a State permit program for discharges into navigable waters, approved by the Administrator under section 402 of the Clean Water Act (33 U.S.C. 1342).

(19) TASK FORCE.—The term "Task Force" means the National Coastal Water Quality Monitoring Task Force established by section 402.

(20) UNDER SECRETARY.—The term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

(21) WATER QUALITY CRITERIA.—The term "water quality criteria" means—

(A) those elements of water quality standards expressed as concentrations of individual pollutants or as narrative statements of water quality; and

(B) other indices of ecosystem integrity that are designed to protect designated uses of water.

(22) WATER QUALITY STANDARD.—The term "water quality standard" means a standard which—

(A) is adopted by a State and approved by the Administrator, or promulgated by the Administrator, under section 303 of the Clean Water Act (33 U.S.C. 1313); and

(B) designates a use or uses for waters to which it applies, specifies water quality criteria to protect those uses, and establishes policies which ensure that waters for which the standard is attained will not be degraded.

TITLE II—COASTAL WATER QUALITY

SEC. 201. PURPOSE.

The purpose of this title is to strengthen the ability of Federal and State water quality programs to protect and restore the coastal waters of the United States.

SEC. 202. COASTAL WATER QUALITY CRITERIA AND STANDARDS.

(a) CRITERIA AND INFORMATION.—Section 304(a) of the Clean Water Act (33 U.S.C. 1314(a)) is amended—

(1) in paragraph (1) by inserting ", including coastal water quality," after "water quality"; and

(2) by adding at the end the following:

"(9)(A) Within 6 months after the effective date of this paragraph, the Administrator shall submit to the Committee on Environment and Public Works of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Merchant Marine and Fisheries of the House of Representatives a detailed 5 year schedule for developing and revising criteria for pollutants which pose the greatest risk to coastal waters. In developing the schedule the Administrator shall consult with the Under Secretary of Commerce for Oceans and Atmosphere and the Governors of affected coastal States. The plan shall provide, among other matters, for the issuance within 2 years of new or revised criteria for pollutants of particular concern, including for—

"(i) hexachlorobenzene;
"(ii) pentachlorophenol;
"(iii) fluorene;
"(iv) phenanthrene;
"(v) anthracene;
"(vi) fluoranthene;
"(vii) pyrene;
"(viii) benzo(a)pyrene;
"(ix) cadmium;
"(x) chromium;
"(xi) copper;
"(xii) cyanide;
"(xiii) lead;
"(xiv) mercury;
"(xv) nickel; and
"(xvi) zinc.

"(B) Within 2 years after the effective date of this paragraph and from time to time thereafter, the Administrator shall develop and publish biological criteria and sediment criteria for assessing coastal water quality that will provide a reliable complement to the pollutant-specific criteria published under this section.".

(b) STANDARDS.—Section 303(c)(2) of the Clean Water Act (33 U.S.C. 1313(c)(2)) is amended by adding at the end the following:

"(C)(i) Within 2 years after the effective date of this paragraph and thereafter whenever a coastal State reviews water quality standards pursuant to paragraph (1), the State shall adopt coastal water quality standards for those pollutants for which criteria and information have been issued under section 304(a)(9).

"(ii) Standards adopted by a State under this subparagraph shall be designed to protect the designated uses adopted by the State and achieve the goals of the Act.

"(iii) If a coastal State fails to adopt coastal water quality standards that are approved by the Administrator under section 304(a)(9), the criteria issued pursuant to section 304(a)(9) shall take effect immediately as enforceable water quality standards for that State pending the adoption of applicable State standards.".

(c) ADDITIONAL AMENDMENTS.—(1) Sections 304(a)(1) and (b) of the Clean Water Act (33 U.S.C. 1314(a)(1) and (b)) are each amended in the first sentences thereof by inserting ", including the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration," after "after consultation with appropriate Federal and State agencies".

(2) Section 304(a)(8) of the Clean Water Act (33 U.S.C. 1314(a)(8)) is amended by—

(A) inserting "and from time to time thereafter" after "the Water Quality Act of 1987"; and

(B) inserting "and other pollutants that may pose risks to coastal and Great Lakes water quality," after "toxic pollutants".

(3) Section 401(a) of the Clean Water Act (33 U.S.C. 1341(a)(1)) is amended in the third sentence by inserting "shall consult with appropriate State and Federal fish and wildlife and coastal zone management authorities on the water quality impacts of the proposed license or permit, and" after "Such State or interstate agency".

SEC. 203. RESTORING AND PROTECTING COASTAL WATER QUALITY.

(a) COASTAL WATER QUALITY.—Section 304 of the Clean Water Act (33 U.S.C. 1314) is amended by adding at the end the following:

"(n) COMPREHENSIVE COASTAL WATER QUALITY PROTECTION PROGRAMS.—

"(1) IN GENERAL.—Within 30 months after the effective date of this section, each coastal State shall develop an enforceable coastal water quality protection program for restoring and protecting coastal water quality and achieving and maintaining designated uses. The program shall build on the information contained in the report of the State under section 305(b), and shall build upon and incorporate the requirements applicable to coastal waters under subsection (l) of this section, sections 303(d), 319, and 320 of this Act, and section 306B of the Coastal Zone Management Act of 1972. The program shall be developed, submitted, and implemented jointly by the State water quality authorities, the State coastal zone management authorities, and other appropriate State and local officials.

"(2) PROGRAM CONTENTS.—The coastal water quality program required by this subsection shall—

"(A) identify from time to time, but in no case less often than once every 3 years—

"(i) those coastal waters for which applicable water quality standards or designated uses cannot reasonably be expected to be achieved or maintained, and

"(ii) those coastal waters that, although currently meeting applicable water quality standards and protecting designated uses, are nonetheless threatened by reasonably foreseeable increases in pollutant loadings from new or expanding sources of pollution;

"(B) for those coastal waters identified under subparagraph (A), identify and implement the enforceable pollution control measures (including water quality based effluent limitations and best management practices) applicable to point and nonpoint sources of pollution, that based upon the best scientific information available are necessary to achieve and maintain coastal water quality standards and protect designated uses, utilizing where appropriate the control strategies of subsection (l), approved programs under section 319, approved plans under section 320, and the authorities of section 306B of the Coastal Zone Management Act of 1972;

"(C) target those high priority coastal waters requiring additional intensive efforts beyond those required by subparagraph (B), and develop and implement detailed remedial programs for those waters consisting of load and wasteload allocations developed and implemented pursuant to section 303(d) of this Act and section 306B of the Coastal Zone Management Act of 1972;

"(D) provide for an enforceable system for allocating and exchanging discharge credits and pollution offsets among point sources and between point and nonpoint sources of pollution into coastal waters, that—

"(i) promotes an efficient pollution reduction program among all sources of pollutants;

"(ii) requires that for any increase in a point source loading secured through such exchanges between point and nonpoint sources there is at least a two-fold reduction in loadings from those nonpoint sources;

"(iii) is compatible with the antidegradation requirements of this Act and ensures that no net increases in pollution loadings will occur as a result of any such exchange;

"(iv) ensures full compliance with the technology-based effluent limitations established under section 301(b);

"(v) places the burden of proof on compliance with these requirements with the participants in any such exchange; and

"(vi) otherwise provides the necessary mechanisms to ensure compliance;

"(E) establish a system whereby the Governor of the coastal State, or any other appropriate State authority, shall certify that the issuance or renewal of any discharge permits, and the undertaking of any other activities that are subject to the pollution control measures identified pursuant to sub-

paragraph (B) or (C), complies with and is fully consistent with such pollution control measures;

"(F) ensures ample opportunity for public participation in all elements of the program; and

"(G) establishes mechanisms to improve coordination among State officials and State and local officials responsible for land use programs and permitting, water quality planning and permitting, habitat protection; and living resource management, through the use of joint project reviews, interagency certifications, memoranda of agreements, and other mechanisms.

"(3) PROGRAM APPROVAL.—(A) No later than 2½ years after the effective date of this section, each coastal State, acting through its water quality and coastal zone authorities jointly, shall submit to the Administrator and the Under Secretary the program required by this subsection. The Administrator and the Under Secretary shall jointly approve the program if they find it meets the requirements of this subsection. If the proposed program does not meet the requirements, the Administrator and the Under Secretary shall promptly inform the State of the modifications that are necessary to meet the requirements and provide a reasonable time, not to exceed 6 months, within which the modifications may be made.

"(B) All applications from States for grants and other assistance pertaining to coastal waters under this section, section 319, or 320 of this Act, or section 306B of the Coastal Zone Management Act of 1972 shall describe in detail the manner in which State water quality, coastal zone, and other appropriate officials will use such assistance to implement the program required by this section.

"(C) The Administrator and the Under Secretary shall not provide any Federal assistance to a coastal State under this Act or the Coastal Zone Management Act of 1972 to implement section 319 or 320 of this Act or section 306B of the Coastal Zone Management Act of 1972 with respect to coastal waters if that State fails to submit an approvable coastal water quality protection program under this section within 3 years after the effective date of this section, except that this prohibition shall terminate with respect to that State upon the approval of a program for the State.

"(4) DEFINITIONS.—In this subsection—

"(A) the term 'coastal waters' means (i) the waters of the Great Lakes under the jurisdiction of the United States, including their connecting waters, harbors, bays, wetlands, and marshes; (ii) those portions of rivers, streams, and other bodies of water having unimpaired connection with the open sea up to the historic head of tidal influence, including salt wetlands, coastal and intertidal areas, bays, harbors and lagoons; and (iii) waters of the territorial sea of the United States;

"(B) the term 'coastal water quality' includes the physical, chemical, and biological parameters that relate to the health and integrity of coastal aquatic ecosystems; and

"(C) the term 'Under Secretary' means the Under Secretary of Commerce for Oceans and Atmosphere.".

(b) CONFORMING AMENDMENTS.—Section 303(d) of the Clean Water Act (33 U.S.C. 1313(d)) is amended—

(1) in the first sentence of paragraph (1)(A), by inserting ", and those coastal waters of the State which are otherwise failing to attain or maintain applicable water quality standards or designated uses"; and

(2) in the first sentence of paragraph (2), by inserting "(but at least once each 3 year period)" after "from time to time".

(c) REPORTING AND COMPLIANCE.—(1) Section 305(b)(1) of the Clean Water Act (33 U.S.C. 1315(b)(1)) is amended—

(A) in subparagraph (D) by striking "and" after the semicolon at the end;

(B) in subparagraph (E) by striking the period at the end and inserting "; and"; and

(C) by adding at the end the following:

"(F) for coastal and Great Lakes States, a description of—

"(i) the activities undertaken to establish and implement water quality standards based upon biological criteria for coastal waters within the State; and

"(ii) the activities to develop and implement pollution control measures pursuant to the State's coastal water quality protection program under section 304(n) of this Act.".

(2) Section 106(f) of the Clean Water Act (33 U.S.C. 1256(f)) is amended—

(A) in paragraph (1) by inserting "and from time to time thereafter" before the colon; and

(B) in paragraph (3) by inserting before the period at the end the following: ", including a description of actions taken by the State in fulfilling the requirements of section 304(n).".

(3) Section 509(b)(1) of the Clean Water Act (33 U.S.C. 1369(b)(1)) is amended—

(A) by striking "and" in clause (F); and

(B) by inserting "and (H) approving a State coastal water quality protection program under section 304(n)," after "section 304(l),".

(4) Section 309(a) of the Clean Water Act (33 U.S.C. 1319(a)) is amended by adding at the end the following:

"(7) Whenever on the basis of any information the Administrator finds that a coastal State has (A) failed to comply with the requirements of section 303(d), or (B) failed to develop, implement, or enforce a coastal water quality protection program under section 304(n), the Administrator shall issue an order requiring the State to comply with such section or requirement, or shall commence a civil action in accordance with subsection (b).".

(5) Section 505 of the Clean Water Act (33 U.S.C. 1365) is amended—

(A) in subsection (a)(1) by inserting after subparagraph (B) the following:

"(C) the requirements of section 304(n), or"; and

(B) in subsection (f)—

(i) in clause (6) by striking "or" after the semicolon at the end; and

(ii) by striking the period at the end and inserting ", or (8) the requirements of section 304(n) of this Act.".

(d) RULE OF CONSTRUCTION.—Except as explicitly provided in this section, nothing in this section shall be construed to affect—

(1) the requirements or schedules established by the Clean Water Act;

(2) judicially approved consent decrees established under section 309 or 505 of that Act (33 U.S.C. 1319, 1365); or

(3) approved control strategies, management programs, or plans under sections 304(l), 319, or 320 of that Act (33 U.S.C. 1314(l), 1329, 1330).

SEC. 204. OUTSTANDING COASTAL RESOURCE WATERS.

(a) DESIGNATION.—Not later than 30 months after the date of the enactment of this Act and after periodic public nominations, notice, and public comment, each coastal State, acting through its water quality or coastal zone management authorities, shall designate as Outstanding Coastal Resource Waters those coastal waters lying wholly or partially within the State which have particular ecological, recreational, or aesthetic value, taking into account their fisheries and shellfish resources, their habitat, and their recreational uses. Coastal waters so designated may include coastal waters in or adjacent to—

(1) an element of the National Park System;

(2) a National Wildlife Refuge;

(3) a National Marine Sanctuary or a National Estuarine Reserve;

(4) a unit of the Coastal Barrier Resources System;

(5) a State park, recreational area, or wildlife preserve of particular ecological significance; or

(6) shellfish growing waters or fish spawning waters of particular State or local significance.

(b) IMPLEMENTATION.—Each coastal State shall revise its continuing planning process developed pursuant to section 303(e) of the Clean Water Act (33 U.S.C. 1313(e)) to ensure that the coastal water quality and designated uses of Outstanding Coastal Resource Waters shall be protected and maintained. In meeting this requirement, each coastal State shall—

(1) either directly or working through local authorities, post all major public access points to those waters to notify the public of their designation as Outstanding Coastal Resource Waters; and

(2) ensure that the State fully implements an antidegradation policy for those waters which attains and maintains water quality and protects designated uses.

SEC. 205. COASTAL DISCHARGE CRITERIA.

(a) ILLEGAL DISCHARGES.—Section 301(a) of the Clean Water Act (33 U.S.C. 1311(a)) is amended by inserting "403," after "402,".

(b) DISCHARGE CRITERIA.—Subsections (a) and (b) of section 403 of the Clean Water Act (33 U.S.C. 1343) are amended to read as follows:

"(a) Except in compliance with the guidelines issued under subsection (c), no permit may be issued or renewed under section 402 for a discharge into—

"(1) estuaries nominated under section 320;

"(2) the oceans; or

"(3) any other navigable waters at the discretion of the Administrator.

"(b) Subsection (d)(2) of section 402 may not be waived for permits for discharges into estuaries nominated under section 320 or the territorial sea, and any objections made by the Administrator under that section shall be subject to judicial review under chapter 7 of title 5, United States Code.".

(c) GUIDELINES.—Subsection (c)(1) of section 403 of the Clean Water Act (33 U.S.C. 1343(c)(1)) is amended by striking "waters of the territorial seas, the contiguous zone, and the oceans" and inserting "estuaries nominated under section 320 and the oceans.".

(d) ISSUANCE OF PERMIT PROHIBITED.—Subsection (c)(2) of section 403 of the Clean Water Act (33 U.S.C. 1343(c)(2)) is amended to read as follows:

"(2) No permit may be issued under section 402—

"(A) if the applicant for the permit has failed to demonstrate the need for the discharge and the lack of reasonable alternatives to it; or

"(B) for any discharge for which insufficient information exists to determine the environmental impact of the discharge based on the guidelines published under this subsection, taking into account the national goals in section 101.".

(e) REVIEW AND REVISION OF GUIDELINES.—Not later than 18 months after the date of enactment of this Act, the Administrator shall review and revise the guidelines required under section 403(c) of the Clean Water Act (33 U.S.C. 1343(c)) to prevent the degradation of coastal water quality and to reflect changes made by this Act.

SEC. 206. MARINE SANITATION DEVICES.

(a) MUNICIPAL ENFORCEMENT.—Section 312(k) of the Clean Water Act (33 U.S.C. 1322(k)) is amended—

(1) by inserting "(1)" after "(k)";

(2) by inserting "or political subdivisions thereof" after "the States"; and

(3) by adding at the end the following:

"(2)(A) A Governor may request in writing that the Secretary enter into, and the Secretary may enter into, a cooperative agreement with the Governor that will authorize the State or its political subdivisions to enforce the requirements of this section. The request shall be accompanied by whatever additional documentation the Secretary considers necessary to assess the ability of the State or its political subdivisions to enforce this section fairly and efficiently.

"(B) The Secretary shall respond to a written request of a Governor under this paragraph not later than 180 days after receiving the request. If the Secretary denies the request, the Secretary shall describe fully the reasons for the denial and provide the Governor an opportunity to revise the request to the satisfaction of the Secretary.

"(C) If the Secretary enters into an agreement with a Governor under this subsection (including a cooperative agreement under this paragraph), such agreement shall authorize the State or its political subdivisions to assess the penalties authorized by this section. Any penalties so assessed shall be retained by the State or a political subdivision thereof to further the purposes of this section.".

(b) NOTIFICATION.—Within one year after the date of the enactment of this Act, the Director of the United States Fish and Wildlife Service and the Administrator shall notify in writing the fish and game and the water pollution control authorities of each coastal State of the availability of funds under section 8 of the Act of August 9, 1950 (16 U.S.C. 777g), popularly known as the Dingell-Johnson Sport Fish Restoration Act, to finance the establishment and improvement of shoreside pumpout stations for marine sanitation devices in conjunction with an approved Federal aid project. Such notification shall include—

(1) a description of the availability of funds in the Sport Fish Restoration Account for such purposes;

(2) a projection of the apportionments on a State-by-State basis under such program for the succeeding 5 years;

(3) guidance relating to the types of pumpout facilities that may be appropriate;

(4) guidance on the coastal waters most likely to be affected by the discharge of sewage from vessels; and

(5) such other information that the Secretary considers suitable to promote the establishment of shoreside pumpout facilities to reduce sewage discharges from vessels and protect coastal waters.

(c) FACILITIES STUDY.—The Environmental Protection Agency and the Coast Guard are directed to conduct a study which would identify the number of oper-

ational pumpout facilities in each State, offer recommendations for the number of operational pumpout facilities that are needed to handle marine sanitation devices in each State, and identify the type of marinas and ports where they should be located.

SEC. 207. POLLUTION CONTROL MEASURES.

(a) IDENTIFICATION.—The Administrator, in consultation with the National Oceanic and Atmospheric Administration, the United States Fish and Wildlife Service, and other Federal agencies, shall after notice and public comment—

(1) identify pollution control measures, including best management practices, that may be suitable for reducing or controlling the introduction of pollutants into coastal waters from various classes or categories of nonpoint sources;

(2) develop techniques for evaluating the effectiveness of those measures, based upon the best scientific information available, that will provide a reasonable basis for making quantitative estimates of the pollution reduction effects of those measures; and

(3) develop and make available to State and local authorities the technical guidance and capabilities to implement and monitor those measures as may be necessary to achieve and maintain coastal water quality.

(b) EVALUATION TECHNIQUES.—Pollution control measures identified by the Administrator under subsection (a) shall include—

(1) a detailed description of the methods, measures, or practices, including structural and nonstructural controls and operation and maintenance procedures, that constitute each control measure;

(2) a description of the categories and subcategories of activities for which each measures may be suitable;

(3) a detailed identification of the individual pollutants or water quality impacts that may be affected by the measures;

(4) a reliable method to make quantitative estimates of the pollution reduction effects of the measures; and

(5) the necessary monitoring requirements to accompany the measures to assess over time the success of the measures in reducing pollution loads.

(c) REBUTTABLE PRESUMPTION.—Any determination of the pollution reduction effects of pollution control measures identified pursuant to this section shall have the force and effect of a rebuttable presumption in any administrative or judicial proceeding under this Act or the Clean Water Act.

SEC. 208. NATIONAL ESTUARY PROGRAM.

(a) MANAGEMENT PLANS.—Section 320(b)(4) of the Clean Water Act (33 U.S.C. 1330(b)(4)) is amended by inserting ", within 5 years after the date on which the management conference is convened," after "plan".

(b) MANAGEMENT CONFERENCES.—Section 320(e) of the Clean Water Act (33 U.S.C. 1330(e)) is amended to read as follows:

"(e) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for a period of at least 10 years. The Administrator may extend a conference after that period for an additional 5 years if the affected Governor or Governors concur in the extension and the extension is necessary to meet the requirements of this section.".

(c) APPROVAL AND IMPLEMENTATION OF CONSERVATION AND MANAGEMENT PLANS.—Section 320(f) of the Clean Water Act (33 U.S.C. 1330(f)) is amended to read as follows:

"(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

"(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve the plan if—

"(A) it meets the requirements of this section;

"(B) it specifies the implementation responsibilities, including funding responsibilities and implementation schedules, of the Federal Government and of State and local governments that participated in development of the plan; and

"(C) the affected Governor or Governors concur.

"(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, the Administrator shall ensure that the Federal responsibilities and commitments under the plan are complied with and implemented. The Administrator, in conjunction with the management conference, shall—

"(A) oversee and provide assistance to the management conference for implementation of the plan;

"(B) coordinate Federal and State programs necessary for implementing the plan;

"(C) make recommendations to the management conference on enforcement and technical assistance activities necessary to ensure compliance with and implementation of the plan;

"(D) collect and make available to the public publications and other forms of information relating to implementation of the plan;

"(E) make plan implementation grants under subsection (g); and

"(F) provide administrative and technical support to the management conference.

"(3) LOCAL OFFICE.—The Administrator may, on the recommendation of and in cooperation with the management conference, establish a local office of the Environmental Protection Agency to assist the Administrator in fulfilling the requirements of this subsection.

"(4) FUNDING.—Funds authorized to be appropriated under section 607, section 319, and subsection (i)(2) of this section may be used in accordance with the applicable requirements of this Act to assist States with the implementation of a conservation and management plan under this section.".

(d) GRANTS.—Section 320(g) of the Clean Water Act (33 U.S.C. 1330(g)) is amended to read as follows:

"(g) GRANTS.—

"(1) RECIPIENTS.—The Administrator may make grants under this subsection to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

"(2) PURPOSES.—Grants under this subsection shall be made for—

"(A) development of conservation and management plans under this section, including research, surveys, studies, modeling, and other technical work necessary for the development of a plan; and

"(B) implementation of conservation and management plans, including any additional research, planning, enforcement, and citizen involvement and education activities necessary to improve plan implementation.

"(3) FEDERAL SHARE.—

"(A) IN GENERAL.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of research, survey, studies, and work carried out with the grant.

"(B) CITIZEN INVOLVEMENT AND EDUCATION GRANTS.—The amount of grants to any person under this subsection for a fiscal year for citizen involvement and education activities shall not exceed 95 percent of the costs of the activity.

"(C) NON-FEDERAL SHARE.—All grants under this subsection shall be made on the condition that the non-Federal share of the costs of activities carried out with the grants are provided from non-Federal sources.".

(e) AUTHORIZATION.—Section 320(i) of the Clean Water Act (33 U.S.C. 1330(i)) is amended to read as follows:

"(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator—

"(1) not to exceed $20,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995, for—

"(A) expenses related to the administration of management conferences under this section, except that not more than 10 percent of amounts appropriated under this paragraph may be used for that purpose; and

"(B) making conservation and management plan development grants under subsection (g)(2)(A); and

"(2) not to exceed $20,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995, for making conservation and management plan implementation grants under subsection (g)(2)(B).".

(f) LONG ISLAND SOUND CONSERVANCY.—Notwithstanding any other provision of law and within one year after the date of the enactment of this Act, the Administrator shall establish an office in the immediate vicinity of Long Island Sound to carry out the approved Long Island Sound conservation and management plan in accordance with the responsibilities of the Administrator under section 320(f)(2) of the Clean Water Act (as amended by this Act).

(g) DESIGNATION.—Notwithstanding any other provision of law, Massachusetts Bay, Massachusetts (including Cape Cod Bay), is hereby designated as an estuary of national significance for purposes of section 320 of the Clean Water Act (33 U.S.C.

1330). The Administrator shall make available to the management conference established for that estuary an appropriate pro rata share of the funds appropriated for implementing that section.

SEC. 209. EXISTING PROVISION NOT AFFECTED.

Nothing in this Act (including the amendments made by this Act)—

(1) amends, repeals, supercedes, or otherwise affects the application of, section 214(g) of the Caribbean Basin Economic Recovery Act (33 U.S.C. 1311 note); or

(2) otherwise applies to a discharge described in that section.

SEC. 210. ALTERNATIVES TO MUD DUMP SITE FOR DISPOSAL OF DREDGED MATERIAL.

(a) REPORT.—Within 90 days after the date of the enactment of this Act, the Administrator shall submit to the Congress a final report on the feasibility of designating an alternative site to the Mud Dump Site at a distance not less than 20 miles from the shoreline.

(b) PLAN.—Within 180 days after the date of the enactment of this Act, the Secretary of the Army and the Administrator shall submit to the Congress a plan for the long-term management of dredged material from the New York/New Jersey Harbor region. The plan shall include—

(1) an identification of the source, quantities, and characteristics of material to be dredged;

(2) a discussion of potential alternative sites for disposal of dredged material, including the feasibility of altering the boundaries of the Mud Dump Site;

(3) measures to reduce the quantities of dredged material proposed for ocean disposal;

(4) measures to reduce the amount of contaminants in materials proposed to be dredged from the Harbor through source controls and decontamination technology; and

(5) a program for monitoring the physical, chemical, and biological effects of dumping dredged material at the Mud Dump Site.

(c) DEMONSTRATION PROJECT.—The Secretary of the Army, in consultation with the Administrator, shall implement a demonstration project for disposing on an annual basis up to 10 percent of the material dredged from the New York/New Jersey Harbor region in an environmentally sound manner other than by ocean disposal. Environmentally sound alternatives may include capping of borrow pits, construction of a containment island, application for landfill cover, habitat restoration, and use of decontamination technology.

(d) DREDGED MATERIAL CRITERIA.—Notwithstanding section 103(d) of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413(d)), only dredged material that meets the criteria of section 102(a) of that Act (33 U.S.C. 1412(a)) may be dumped at the Mud Dump Site.

(e) MUD DUMP SITE DEFINED.—For purposes of this section, the term "Mud Dump Site" means the area located approximately 5¾ miles east of Sandy Hook, New Jersey, with boundary coordinates of 40 degrees, 23 minutes, 48 seconds North, 73 degrees, 51 minutes, 28 seconds West; 40 degrees, 21 minutes, 48 seconds North, 73 degrees, 50 minutes, 00 seconds West; 40 degrees, 21 minutes, 48 seconds North; 73 degrees, 51 minutes, 28 seconds West; and 40 degrees, 23 minutes, 48 seconds North; 73 degrees, 50 minutes, 00 seconds West.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for fiscal year 1991, $500,000 to implement subsection (b) and $1,000,000 to implement subsection (c), and such sums as may be necessary for fiscal year 1992.

(g) REPEAL.—Section 211 of the Water Resources Development Act of 1986 (33 U.S.C. 2239) is repealed.

TITLE III—COASTAL MANAGEMENT

SEC. 301. PURPOSES.

The purposes of this title are the following:

(1) To strengthen the regulatory and administrative links between coastal zone management and water quality programs at the Federal and State levels, particularly for the control of land and water uses which, individually or cumulatively, may impair coastal water quality.

(2) To encourage each State coastal zone management program to promote sound management of land uses which affect coastal water quality and coastal habitat, particularly from the cumulative effects of coastal development, through the adoption and implementation of an Aquatic Resources Protection Program in accordance with the amendments made by this title.

(3) To expand State and local authorities, capabilities, and incentives to protect critical coastal areas and to restore degraded coastal habitats, including degraded coastal waters, where those habitats and waters are adversely affected by coastal land use.

SEC. 302. COASTAL ZONE MANAGEMENT ACT OF 1972 AMENDMENTS.

(a) FINDINGS.—Section 302 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451) is amended by adding at the end the following:

"(k) Land use in the coastal zone, and the use of adjacent lands which drain into the coastal zone, may affect the quality of coastal waters and habitat, and efforts to control coastal water pollution from land use activities must be improved.".

(b) POLICY.—Section 303(2) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1452(2)) is amended by inserting the following after subparagraph (B), and by redesignating the subsequent subparagraphs accordingly:

"(C) the management of coastal development to protect the quality of coastal waters and to prevent the impairment of existing uses of those waters,".

(c) PROTECTING AND RESTORING COASTAL WATER QUALITY.—The Coastal Zone Management Act of 1972 is amended by inserting after section 306A (16 U.S.C. 1455a) the following:

"SEC. 306B. MANAGING LAND USES THAT AFFECT COASTAL WATERS.

"(a) IN GENERAL.—

"(1) PROGRAM DEVELOPMENT.—Not later than 3 years after the effective date of this section, the management agency chosen pursuant to section 306(d)(5) by each State for which a program has been approved pursuant to section 306 (hereinafter in this section referred to as the 'coastal management agency'), shall prepare and submit to the Under Secretary an Aquatic Resources Protection Program (hereinafter in this section referred to as the 'program') for approval pursuant to subsection (c). The purpose of the program shall be to develop and implement coastal land use management measures for land-based sources of nonpoint-source pollution, working in close conjunction with other State and local authorities.

"(2) PROGRAM COORDINATION.—The program shall be developed, submitted, and implemented in conjunction with and as a part of the comprehensive coastal water quality protection program under section 304(n) of the Federal Water Pollution Control Act. In developing and carrying out the program, the coastal management agency shall coordinate closely with State and local water quality authorities. Each program shall be integrated with the State's coastal water quality program under section 304(n) of the Federal Water Pollution Control Act, and shall be compatible and coordinated with the programs developed pursuant to sections 208, 303, 319, and 320 of that Act.

"(b) PROGRAM CONTENTS.—The Secretary shall approve a program under this section if it provides for the following:

"(1) IDENTIFYING LAND USES.—The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

"(A) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the State pursuant to its water quality planning processes;

"(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources; or

"(C) Outstanding Coastal Resource Waters designated pursuant to section 204 of the Coastal Defense Initiative of 1990.

"(2) IDENTIFYING CRITICAL AREAS.—The identification of, and a continuing process for identifying, critical coastal areas within which any new land uses or substantial expansion of existing land uses will be subject to the land use management measures that are determined by the coastal management agency, in cooperation with the State water quality authority and other State or local authorities, as appropriate, to be necessary to protect and restore coastal water quality and designated uses.

"(3) COASTAL LAND USE MANAGEMENT MEASURES.—(A) The implementation and continuing revision from time to time of land use management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that the coastal management authority, working in conjunction with the State water pollution control agency and other State and local authorities, determines are necessary to achieve applicable water quality standards and protect designated uses.

"(B) Coastal land use management measures under this paragraph may include, among other measures, the use of—

"(i) buffer strips;

"(ii) setbacks;

"(iii) density restrictions;

"(iv) techniques for identifying and protecting critical coastal areas and habitats;

"(v) soil erosion and sedimentation control; and

"(vi) siting and design criteria for water uses, including marinas.

"(4) TECHNICAL ASSISTANCE.—The provision of technical and financial assistance to local governments and the public for implementing the measures referred to in paragraph (3), including assistance in developing ordinances and regulations; technical guidance and modeling to predict and assess the effectiveness of such measures; training; financial incentives; demonstration projects; and other innovations to protect coastal water quality and achieve and maintain designated uses.

"(5) PUBLIC PARTICIPATION.—Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education, and other means and measures.

"(6) ADMINISTRATIVE COORDINATION.—The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project reviews, interagency certifications, memoranda of agreements, and other mechanisms.

"(7) STATE COASTAL ZONE BOUNDARY MODIFICATION.—Modification of the boundaries of the State coastal zone as the coastal management agency determines is necessary to manage the land uses identified pursuant to paragraph (1) and to implement, as may be required, the recommendations made pursuant to section 303.

"(c) PROGRAM SUBMISSION AND APPROVAL.—

"(1) PROCEDURES.—The submission and approval of a proposed program under this section shall be governed by the procedures established by section 306(g).

"(2) ELIGIBILITY FOR AND WITHDRAWAL OF ASSISTANCE.—(A) Except as provided in subparagraph (B), if the Under Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the State shall not be eligible for any funds under section 603 of the Coastal Defense Initiative of 1990, and the Under Secretary shall withdraw a portion of grants otherwise available to such State under section 306 of this Act as follows:

"(i) 10 percent after 3 years after the date of the enactment of this section.

"(ii) 15 percent after 4 years after the date of the enactment of this section.

"(iii) 20 percent after 5 years after the date of the enactment of this section.

"(iv) 30 percent after 6 years after the date of the enactment of this section and thereafter.

The Under Secretary shall make amounts withdrawn under this subparagraph available to States having programs approved under this section.

"(B) If the Under Secretary finds that a State has made satisfactory progress in developing a program under subsection (a) and that additional time is required for the State to complete necessary statutory or regulatory changes to develop the program, the Under Secretary may authorize no more than 3 additional years for the State to comply with this section.

"(3) GUIDELINES.—Within 180 days after the effective date of this section, the Under Secretary shall issue guidelines for coastal States to follow in developing a program. Within 18 months after that effective date, the Under Secretary shall promulgate regulations governing the receipt, review, and approval of programs under this section.

"(d) TECHNICAL ASSISTANCE.—The Under Secretary, in consultation with the Administrator and other Federal agencies, shall provide technical assistance to States and local governments in developing and implementing programs under this section. Such assistance shall include—

"(1) methods for assessing water quality impacts associated with coastal land uses;

"(2) methods for assessing the cumulative water quality effects of coastal development;

"(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to State and local governments in identifying, developing, and implementing pollution control measures; and

"(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

"(e) FINANCIAL ASSISTANCE.—From amounts appropriated pursuant to section 603(c)(1)(B) of the Coastal Defense Initiative of 1990, the Under Secretary shall provide grants to each coastal State to assist in fulfilling the requirements of this section if the coastal State matches any such grant according to a 4 to 1 ratio of Federal to State contributions.".

SEC. 303. INLAND BOUNDARIES OF COASTAL ZONES.

(a) REVIEW.—Within 18 months after the date of the enactment of this Act, the Under Secretary shall review the inland boundary of the coastal zone of each coastal State program which has been approved or is proposed for approval under section 306 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455) and evaluate whether the boundary extends inland to the extent necessary to control the land and water uses that have a significant impact on coastal waters of the State.

(b) RECOMMENDATION.—If the Under Secretary finds that modifications to the inland boundary of a State's coastal zone are necessary for that State to more effectively manage land and water uses in order to protect coastal waters, the Under Secretary shall recommend appropriate modifications in writing to the State.

SEC. 304. COORDINATION WITH NATIONAL ESTUARY

Each State agency designated under section 306(c)(5) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455(c)(5)) shall nominate a representative of the agency for appointment by the Administrator to an appropriate position on any management conference convened under section 320 of the Clean Water Act (33 U.S.C. 1330) for waters lying wholly or partially within the jurisdiction of the State.

TITLE IV—COASTAL WATER QUALITY MONITORING PROGRAM

SEC. 401. PURPOSE.

The purpose of this title is to establish long-term water quality monitoring programs for high priority coastal waters that will enhance the ability of Federal, State, and local authorities to develop and implement effective remedial programs for those waters.

SEC. 402. NATIONAL COASTAL WATER QUALITY MONITORING TASK FORCE.

(a) ESTABLISHMENT.—There is established the National Coastal Water Quality Monitoring Task Force (hereinafter in this title referred to as the "Task Force").

(b) MEMBERSHIP.—The Task Force shall consist of the following representatives appointed from among individuals having expertise in coastal water quality monitoring and coastal regulatory affairs:

(1) A representative of the Environmental Protection Agency, who shall serve as the chairperson of the Task Force.

(2) A representative of the National Oceanic and Atmospheric Administration.

(3) A representative of the United States Fish and Wildlife Service.

(4) A representative of the Army Corps of Engineers.

(5) 4 representatives of State governments appointed by the chairperson, who shall include—

(A) one individual representing an Atlantic coastal State;

(B) one individual representing a Gulf of Mexico coastal State;

(C) one individual representing a Pacific coastal State; and

(D) one individual representing a Great Lakes State.

(6) 4 representatives of the marine scientific community, appointed by the chairperson.

(c) COMPENSATION.—Members of the Task Force who are not officers or employees of the United States or any State government, while performing official duties as members of the Task Force, may receive travel or transportation expenses under section 5703 of title 5, United States Code.

SEC. 403. NATIONAL COASTAL WATER QUALITY MONITORING STRATEGY.

(a) NATIONAL STRATEGY.—The Task Force shall develop and implement a national strategy for conducting coastal water quality monitoring programs in accordance with this title. The Task Force shall—

(1) identify all Federal water quality monitoring programs applicable to coastal waters and, to the maximum extent possible, incorporate those programs into the national strategy;

(2) develop a memorandum of understanding among appropriate Federal agencies no later than one year after the date of the enactment of this Act, which shall outline a process for implementing the national strategy at the Federal level;

(3) develop national monitoring guidelines in accordance with section 404;

(4) select high priority coastal waters from the recommendations of the regional monitoring teams established under section 405, and review, approve, or disapprove coastal water quality monitoring programs developed by regional teams, in accordance with section 405;

(5) provide for the maximum coordination of Federal monitoring activities with coastal water quality monitoring programs developed under this title; and

(6) provide for a national reference center for coastal water quality monitoring efforts, as required by section 408.

(b) REPORTING.—Not later than 2 years after the date of the enactment of this Act and triennially thereafter, the Administrator, acting on behalf of the Task Force, shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, summarizing the efforts undertaken to fulfill the requirements of this title and the status of the monitoring programs developed under section 405.

SEC. 404. MONITORING GUIDELINES.

(a) IN GENERAL.—Not later than 18 months after the date of the enactment of this Act, the Task Force shall issue guidelines to assist in the development and implementation of coastal water quality monitoring programs under section 405. These guidelines shall—

(1) seek to provide an appropriate degree of uniformity among the coastal water quality monitoring programs while preserving the flexibility of each monitoring program to address local needs;

(2) include guidance for establishing monitoring programs that will—

(A) identify and quantify the severity of existing or anticipated problems in coastal water quality; and

(B) identify and quantify sources of pollution that cause or contribute to those problems; and

(3) evaluate over time the effectiveness of efforts to reduce or eliminate those sources.

(b) TECHNICAL PROTOCOLS.—Guidelines issued under subsection (a) shall include, but not be limited to, protocols for—

(1) designing monitoring networks and monitoring surveys;

(2) sampling and analysis, including appropriate physical and chemical parameters, living resources parameters, and sediment analysis techniques; and

(3) intercalibration, quality assessment, quality control, and data management.

(c) PERIODIC REVIEW.—The Task Force shall periodically review and report on the guidelines issued under this section, to evaluate their effectiveness, the degree to which they continue to provide an appropriate degree of uniformity while taking local conditions into account, and any need to modify or supplement them with new guidelines.

SEC. 405. COASTAL WATER QUALITY MONITORING PROGRAMS.

(a) REGIONAL TEAMS.—Not later than 6 months after the date of the enactment of this Act, the Task Force shall establish a Regional Coastal Water Quality Monitoring Team for each coastal region. Each regional team shall be comprised of individuals with recognized technical expertise in coastal water quality monitoring programs, and shall include—

(1) 4 representatives of the scientific community;

(2) 2 representatives of private institutions;

(3) a representative of each participating State;

(4) representatives of local governments;

(5) representatives of the public at large; and

(6) representatives of the Administrator, the Under Secretary, and such Federal agencies as considered appropriate by the Task Force, who shall serve as ex officio members of the regional team.

Each regional team shall select one of its members to serve as chairperson of the team.

(b) REGIONAL RESPONSIBILITIES.—Each regional team shall—

(1) recommend areas of coastal waters within its region that should be designated as high priority coastal waters and for which individual monitoring plans should be developed under this subsection, taking into account the identification of impaired coastal waters made pursuant to section 304(n) of the Clean Water Act or section 306B of the Coastal Zone Management Act of 1972;

(2) submit its recommendations under paragraph (1) to the Task Force for its review and approval;

(3) develop a coastal water quality monitoring program for each area designated as high priority coastal waters by the Task Force in accordance with subsection (c);

(4) provide for public participation in the development and implementation of the monitoring programs;

(5) provide technical guidance for the implementation of the monitoring programs;

(6) review from time to time the effectiveness of the monitoring programs in meeting their objectives and make whatever modifications may be necessary in consultation with the Task Force; and

(7) issue from time to time a report on the general status of coastal water quality within the region.

(c) COASTAL WATER QUALITY MONITORING PROGRAMS.—Each coastal water quality monitoring program developed pursuant to this section shall—

(1) clearly state the goals and objectives of the monitoring program and their relationship to the water quality regulatory objectives for the waterbody;

(2) identify the water quality and living resource parameters of the monitoring program and their relationship to these goals and objectives;

(3) describe the types of monitoring networks, surveys, and other activities to achieve these objectives, using where appropriate the guidelines issued under section 404;

(4) survey existing Federal, State, and local coastal monitoring activities and private compliance monitoring activities in or on the waters to which the program applies, describe the relationship of the program to these other monitoring activities, and integrate them, as appropriate, into the monitoring program;

(5) describe the data management and quality control components of the program;

(6) specify the implementation requirements for the program, including—

(A) the lead State or regional authority which will administer the monitoring program;

(B) the public and private parties, including all dischargers into the waters covered by the monitoring program, which will be required to implement the program, and a detailed schedule for its implementation;

(C) all Federal and State responsibilities for implementing the program; and

(D) the changes in Federal, State, and local programs necessary to implement the monitoring program;

(7) estimate the costs to Federal, State, and local participants, of implementing the monitoring program;

(8) describe the technical guidance that shall be provided to those responsible for implementing the program; and

(9) describe the methods to assess periodically the success of the monitoring program in meeting its objectives, and the manner in which the program may be modified from time to time.

(d) APPROVALS.—(1) Not later than 18 months after the date of the enactment of this Act and periodically thereafter, each regional team shall submit to the Task Force, in accordance with a schedule to be issued by the Task Force, recommendations for areas of coastal water within that region that should be designated as high priority coastal waters. The Task Force shall approve or disapprove each recommended designation, and promptly notify the appropriate regional team of that approval or disapproval, based on—

(A) the availability of funds from the Coastal Defense Fund and other Federal sources;

(B) the availability of matching funds from participating States for that use;

(C) the need for a monitoring program for the coastal waters that are the subject of the recommendation; and

(D) such other factors as the Task Force considers appropriate.

(2)(A) Each regional team shall submit a proposed coastal water quality monitoring program to the Task Force. Not later than 60 days after receiving a proposed program, the Task Force shall review the proposed program and approve it if it meets the requirements of this section or recommend to the regional team modifications and return the proposed program to the regional team.

(B) Not later than 60 days after receiving a proposed program returned by the Task Force under subparagraph (A), a regional team shall make the appropriate changes to the proposed program and resubmit the proposed program to the Task Force.

(C) If a regional team does not submit a proposed program which is approvable under this section, the Administrator may, in cooperation with the Under Secretary and in consultation with the affected Governors, develop such a program in accordance with the requirements of this section.

(3)(A) Coastal water quality monitoring programs approved under this subsection may be implemented with amounts made available under section 604.

(B) The Task Force shall not approve any proposed coastal water quality monitoring program under this section unless participating States provide at least 25 percent of the estimated cost of implementing the program.

SEC. 406. COMPLIANCE AND ENFORCEMENT.

(a) BINDING REQUIREMENTS.—The implementation requirements of a coastal water quality monitoring program approved under section 405, as specified pursuant to section 405(c)(6), shall be binding on all Federal, State, and local officials and private parties as provided for in the program.

(b) ENFORCEMENT.—(1) The Under Secretary, the Administrator, and the Governor of each participating State shall ensure compliance with a coastal water quality monitoring program approved under section 405.

(2) The requirements of a coastal water quality monitoring program approved under this section—

(A) are deemed to be requirements of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 for purposes of section 105 of that Act (33 U.S.C. 1415); and

(B) shall be submitted for approval as part of any relevant coastal zone management program under section 306(g) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1455(g)).

(c) INCORPORATION INTO DISCHARGE PERMITS.—The Administrator or a State permitting authority shall, upon the approval of a coastal water quality monitoring program under section 405 and after notice and opportunity for public comment, incorporate into the appropriate discharge permits the applicable monitoring requirements specified by the program. The incorporation is deemed to be a minor modification of such permit.

SEC. 407. NATIONAL COASTAL WATER QUALITY REFERENCE CENTER.

(a) IN GENERAL.—There is established in the National Oceanic and Atmospheric Administration the National Coastal Water Quality Reference Center (hereinafter in this section referred to as the "Center"). The Center shall work in close cooperation with other Federal water quality information systems, and shall develop and maintain a catalog of coastal water quality monitoring activities conducted pursuant to this title and other Federal programs.

(b) DISSEMINATION OF DATA AND INFORMATION.—The Center shall request from the regional teams established under section 405 summaries of the monitoring activities conducted in each region pursuant to this title and other laws, and shall make the summaries available to other Federal agencies, State, and local officials, and the public upon request.

TITLE V—COMPLIANCE AND ENFORCEMENT

SEC. 501. PURPOSES.

The purposes of this title are to increase compliance with Federal and State water pollution control requirements for coastal areas, by—

(1) strengthening the sanctions for noncompliance;

(2) requiring auditing of pollution control programs of certain dischargers into coastal waters; and

(3) strengthening penalties so as to create economic incentives for complying with Federal coastal pollution control laws.

SEC. 502. FEDERAL PROCUREMENT.

(a) IDENTIFICATION OF VIOLATORS.—The Administrator shall identify and provide to Federal agencies a list of those persons introducing pollutants into coastal waters who have been found by the Administrator, in consultation with appropriate State permitting authorities, to be—

(1) in significant noncompliance with discharge permits issued pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342) by the Administrator or a State permitting authority;

(2) in significant noncompliance with requirements established by an approved management program developed pursuant to section 319 of the Clean Water Act (33 U.S.C. 1329); or

(3) in significant noncompliance with comprehensive conservation and management plan approved under section 320 of the Clean Water Act (33 U.S.C. 1330).

The Administrator shall revise this list annually.

(b) ELIGIBILITY FOR FEDERAL CONTRACTS.—No Federal agency may enter into any contract with any person included in a list under subsection (a), for the procurement of goods, materials, or services, if the contract is to be performed at any facility which gave rise to the finding made by the Administrator under subsection (a) and which is owned, leased, operated, or supervised by that person.

(c) DURATION OF PROHIBITION.—The prohibition in subsection (b) shall continue in effect for a person until the Administrator certifies that the condition giving rise to the finding in subsection (a) has been corrected and the environmental audit required by section 505 has been performed.

(d) REGULATIONS.—Each Federal agency shall review and revise its procurement procedures and regulations as necessary to implement the requirements of this title.

SEC. 503. LIMITATIONS ON FEDERAL DEVELOPMENT PROJECTS AND FINANCIAL ASSISTANCE.

(a) FEDERAL PROJECTS AND ASSISTANCE.—Except as provided in subsection (e), no Federal agency may undertake any development project, or award any grant for any activity, that may adversely affect coastal water quality, in any coastal State which the Administrator finds, under regulations issued after notice and public comment, has demonstrated a pattern of substantial and willful failure to adopt, attain, and maintain coastal water quality standards and protect designated uses for coastal waters of the State in accordance with this Act and the Clean Water Act.

(b) IDENTIFICATION OF VIOLATORS.—The Administrator shall provide annually to the heads of all affected agencies the information necessary to implement subsection (a).

(c) DURATION OF PROHIBITION.—The prohibition in subsection (a) shall continue in effect with respect to a coastal State or an area until the Administrator certifies to the coastal State and affected Federal agencies that the conditions giving rise to the finding made pursuant to subsection (a) with respect to that State or area have been corrected and the applicable coastal water quality standards are being achieved.

(d) REGULATIONS.—(1) The Administrator shall promulgate regulations, after notice and public comment, that identify the types of development projects or grants that are subject to the requirements of subsection (a).

(2) After the issuance of regulations under paragraph (1), each Federal agency which administers development projects or grants that are subject to this section shall review and revise as necessary their procedures and regulations governing those projects or grants to comply with the requirements of this section.

(e) EXCEPTION.—Subsection (a) shall not apply to any Federal development project or grant—

(1) the direct and principal purpose of which relates to public health, public safety, or improvement of coastal water quality; or

(2) that the President determines to be in the paramount interest of the United States to carry out.

SEC. 504. FEDERAL FACILITY COMPLIANCE.

(a) WAIVER OF SOVEREIGN IMMUNITY.—For purposes of enforcing any substantive or procedural requirement of this Act or the Clean Water Act (including any injunctive relief; administrative order; or civil, criminal, or administrative penalty or other sanction), against any Federal department, agency, or instrumentality discharging pollutants into coastal waters, the United States hereby expressly waives any immunity otherwise applicable to the United States.

(b) ADMINISTRATIVE ENFORCEMENT ACTIONS.—The Administrator may commence an administrative enforcement action against any department, agency, or instrumentality of the executive branch to enforce the provisions of this Act. In any such action, the administrative procedures and remedies, including mandatory and prohibitory equitable relief and penalties, applicable to other persons under section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415) shall apply.

SEC. 505. ENVIRONMENTAL AUDITING PROGRAM.

(a) FEDERAL FACILITIES.—

(1) ENVIRONMENTAL AUDITING PROGRAMS.—Each Federal department, agency, or instrumentality which owns or operates a facility that discharges pollutants into coastal waters that would qualify it as a major discharger if it were an industrial facility, as determined by the Administrator, shall develop and implement a program to conduct on an ongoing basis environmental audits of its qualifying facilities.

(2) SUBMISSION OF PLAN.—(A) Not later than 1 year after the date of the enactment of this Act, each Federal department, agency, or instrumentality subject to paragraph (1) shall submit to the Administrator a plan for carrying out environmental audits of its qualifying facilities.

(B) During the first year of implementation of a plan under this section, each Federal department, agency, or instrumentality that is subject to paragraph (1) shall conduct environmental audits on a biannual basis, and thereafter from time to time as determined necessary by the Administrator.

(b) NONCOMPLYING FACILITIES.—Each industrial discharger and each publicly owned treatment works, which discharge pollutants into coastal waters that is found by the Administrator or a State to be in significant noncompliance with a discharge permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342) or an approved consent decree issued under section 309 or 505 of that Act (33 U.S.C. 1319, 1365) shall conduct on a quarterly basis an environmental audit of the facilities subject to the permit or consent decree. Each such discharger shall conduct these audits until such time as the Administrator certifies, based on the audits and other available data, that the condition giving rise to the finding has been corrected and the facility is no longer in violation of applicable requirements of the permit or consent decree.

(c) PERMIT RENEWALS.—Prior to the renewal of any permit issued by the Administrator or a State permitting authority under section 402 of the Clean Water Act (33 U.S.C. 1342) authorizing the discharge of pollutants into coastal waters, each major discharger shall provide to the Administrator a certification by an environmental auditor that an environmental audit of the major discharger has been conducted during the previous 3 months and that the auditor has certified that each facility subject to the permit or consent decree is in compliance with all requirements of the Clean Water Act.

(d) AUDIT REQUIREMENTS.—The audit required under subsections (b) and (c) shall be conducted by an independent environmental auditor certified in accordance with subsection (f), unless the Administrator or State permitting authority determines that the permittee has an internal auditing program which is fully consistent with the regulations issued by the Administrator under subsection (e). Copies of the audit shall be provided to the Administrator and the appropriate State official and may, upon request and subject to subsection (g), be provided to the public.

(e) REGULATIONS AND GUIDANCE.—(1) Not later than 1 year after the date of the enactment of this Act, the Administrator shall issue regulations for the development and implementation of environmental auditing programs.

(2) Not later than 6 months after the date of the enactment of this Act, the Administrator shall issue guidance to States on the development and establishment of State programs to certify persons to perform environmental audits under this section.

(f) CERTIFICATION REQUIREMENTS.—(1) Not later than 3 months after the date of the enactment of this Act, the Administrator shall identify eligibility requirements for certification of environmental auditors and continuing education requirements for maintaining that certification.

(2) Until such time as a State has established a program for certifying environmental auditors that is consistent with guidance issued by the Administrator under subsection (e), and unless the Administrator or State has determined that a permittee has an internal environmental auditing program which is fully consistent with the regulations issued under subsection (e), a permittee may use for purposes of this

section an environmental auditor who meets the eligibility requirements identified by the Administrator under paragraph (1) of this subsection.

(3) After a State has established a program for certifying environmental auditors that is consistent with guidance issued by the Administrator under subsection (e), a permittee shall select an auditor from a list of certified environmental auditors provided by the State in which the discharger is located.

(g) CONFIDENTIALITY OF DATA.—(1) The Administrator or a State may withhold from public disclosure data contained in an environmental audit, that is determined by the Administrator to fall within subsection (b)(4) of section 552 of title 5, United States Code.

(2) The requirements of section 1905 of title 18, United States Code, shall apply to the disclosure of any information contained in an audit that qualifies for protection from disclosure under that section.

SEC. 506. ELIMINATION OF ECONOMIC INCENTIVES.

(a) PENALTIES UNDER THE CLEAN WATER ACT.—Section 309 of the Clean Water Act (33 U.S.C. 1319) is amended by adding at the end the following:

"(h) Notwithstanding any limitation on the amount of a penalty under this section, any penalty assessed by the Administrator or a court in a civil action against a person discharging pollutants into coastal waters for a violation of applicable effluent limitations or other permit requirements shall, where possible, be in an amount adequate to eliminate any economic benefit or savings, including interest, that may have accrued to that person as a result of the violation.".

(b) PENALTIES UNDER THE MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972.—Section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1415) is amended by adding at the end the following:

"(i) Notwithstanding any limitation on the amount of a penalty under this section, in assessing any penalty in a civil action for a violation under this section, the Administrator or the court shall seek where possible to assess a penalty in an amount sufficient to eliminate any economic benefit or savings, including interest, that may have accrued to the violator as a result of the violation.".

SEC. 507. POSTING OF COASTAL WATERS.

(a) REQUIREMENTS.—Each State that has coastal waters within its boundaries that do not meet applicable water quality standards or do not protect or maintain designated uses shall, either directly or through local authorities, post and maintain a clearly visible sign at each major place of public access to those waters (including public roads, public beaches, public parks, public recreation areas, and public marinas and boat launching areas) indicating water quality standards the particular waterbody does not meet and the principal health and environmental effects that may occur as a result of the failure to meet those standards. The sign shall be maintained until the particular waterbody is in compliance with all applicable water quality standards.

(b) GUIDANCE.—Within 6 months after the date of the enactment of this Act, the Administrator shall issue guidance to States on the requirements of subsection (a).

SEC. 508. ENFORCEMENT.

Any violation of the requirements of this Act are deemed to be a violation of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 for the purposes of section 105 of that Act (33 U.S.C. 1415).

SEC. 509. OCEAN DUMPING ENFORCEMENT.

Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is amended as follows:

(1) Section 101(a) (33 U.S.C. 1411(a)) is amended by—

(A) inserting "any material" after "no person shall transport" in paragraphs (1) and (2);

(B) inserting "for any purpose that includes dumping it into ocean waters or dump any material into ocean waters" after "from the United States" in paragraph (1);

(C) inserting "for any purpose that includes dumping it into ocean waters or dump any material into ocean waters" at the end of paragraph (2); and

(D) striking "any material for the purpose of dumping it into ocean waters" at the end of the section.

(2) Subsection 102 (33 U.S.C. 1412) is amended by adding at the end the following:

"(f) The Administrator may prohibit the issuance of permits under this section for the dumping of material which does not comply with the criteria established under subsection (a) relating to the effects of ocean dumping on the marine environment.".

(3) Section 105 (33 U.S.C. 1415) is amended in subsection (a), by striking "$50,000 for each violation to be assessed by the Administrator", and inserting "$75,000 for each violation to be assessed by the Administrator, except the maximum amount of any penalty under this paragraph shall not exceed $200,000".

(4) Section 105 (33 U.S.C. 1415) is amended by adding at the end the following:

"(j) From the sums recovered as penalties or fines under this title, the Administrator may permit the payment of no more than $10,000 to any person who furnished information which leads to an administrative finding of liability, civil judgment, or criminal conviction under this title.".

TITLE VI—FUNDING

SEC. 601. PURPOSES.

The purpose of this title is to—

(1) establish a Coastal Defense Fund in the United States Treasury and authorize establishment of State coastal protection funds to preserve and protect coastal water quality; and

(2) authorize the financing of State coastal protection funds with revenues from a National Coastal Effluent Fee System and other sources.

SEC. 602. COASTAL DEFENSE FUND.

(a) ESTABLISHMENT OF FUND.—(1) There is hereby established in the Treasury of the United States a fund, to be known as the "Coastal Defense Fund", consisting of such amounts as may be deposited into it or transferred to it pursuant to this title. Amounts in the Fund shall remain available until expended, subject to appropriation, to carry out section 603.

(2) The Secretary of the Treasury shall invest such portion of the Fund as may remain unobligated in any fiscal year in interest-bearing obligations of the United States. The interest on, and the proceeds from the sale of, the interest-bearing obligations shall be deposited into and become a part of the Fund.

(b) PAYMENTS INTO THE COASTAL DEFENSE FUND.—Notwithstanding any other provision of law, the following amounts shall be credited to the Fund:

(1) Receipts in the form of fees that are assessed by the Administrator under the coastal effluent fee system established under section 604.

(2) Amounts required to be deposited into the Fund under section 605.

(3) Amounts required to be deposited into the Fund under section 606.

SEC. 603. STATE GRANTS.

(a) ANNUAL GRANTS.—The Administrator and the Under Secretary shall make annual grants from amounts in the Coastal Defense Fund allocated under subsection (c), to a coastal State that—

(1) establishes a coastal protection fund into which it will deposit grants under this section;

(2) agrees to make grants and other expenditures from that fund in accordance with the requirements of this section; and

(3) agrees to implement such periodic reporting and accounting procedures as the Administrator considers appropriate.

(b) AMOUNT OF GRANTS.—The amount of each grant to a State under this section shall be determined by the Administrator and the Under Secretary, taking into consideration, among other matters, the following:

(1) Identification by the State of coastal waters under section 304(n) of the Clean Water Act or section 204 of this Act.

(2) The extent and nature of development of the shoreline and area of the State's coastal zone.

(3) Existing and projected trends in population in the State's coastal zone.

(4) Participation by the State in the regional monitoring program under title IV of this Act.

(5) Participation by the State in a program approved pursuant to section 306B of the Coastal Zone Management Act of 1972.

(6) Effluent fees paid by coastal dischargers in the State under section 604.

(c) ALLOCATION.—(1) Amounts in the Coastal Defense Fund available for grants under this section shall be allocated as follows:

(A) 30 percent shall be used by the Administrator for grants to coastal States under subsection (b) for the following purposes:

(i) Developing, implementing, and enforcing Coastal Water Quality Protection Programs under section 304(n) of the Clean Water Act.

(ii) Identifying and implementing requirements for Outstanding Coastal Resource Waters pursuant to section 204 of this Act.

(B) 30 percent shall be used by the Under Secretary for grants to coastal States under subsection (b) for the purposes of preparing and implementing Aquatic Resources Protection Programs under section 306B of the Coastal Zone Management Act of 1972.

(C) 20 percent shall be used by the Administrator, in consultation with the Under Secretary, for grants to coastal States to implement regional monitoring programs authorized by title IV of this Act.

(D) 10 percent shall be used by each of the Administrator and the Under Secretary to fulfill the requirements of this Act.

(2) Within 6 months after the date of the enactment of this Act, the Administrator and the Under Secretary shall enter into an agreement to establish the mechanisms by which they will coordinate their responsibilities under this title so as to ensure the best overall use of the funds allocated under this subsection to maximize improvements in coastal water quality and achieve the purposes of this Act.

(3) Before making grants under this subsection to a coastal State, the Administrator or the Under Secretary, as appropriate, shall enter into an agreement with the State which describes how such grants will be used and how such grants will assist in achieving the objectives of this Act. Each agreement shall—

(A) prohibit the use of funds received by a State under this section, to supplant non-Federal funds that would otherwise be available for purposes described in this section;

(B) require that a coastal State shall expend annually for activities carried out with the grant an amount of non-Federal funds at least equal to such expenditures during the preceding fiscal year; and

(C) require the coastal State to contribute to activities funded with a grant under this section an amount from non-Federal sources equal to 25 percent of the total amount of grants to the State under this section for that activity.

SEC. 604. COASTAL EFFLUENT FEE SYSTEM.

(a) ESTABLISHMENT OF SYSTEM.—Not later than 2 years after the date of the enactment of this Act, the Administrator shall establish a National Coastal Effluent Fee System (hereinafter in this section referred to as the "System") applicable to coastal dischargers identified by the Administrator pursuant to subsection (c).

(b) OBJECTIVES.—The objectives of the System are—

(1) to supplement existing public funding for Federal, State, and local programs to achieve and maintain coastal water quality; and

(2) to provide economic incentives for coastal dischargers to eliminate, or where elimination is not possible to reduce, the volume or toxicity of effluents.

(c) PROGRAM COSTS.—(1) The Administrator shall establish a schedule of fees to be assessed annually against each coastal discharger subject to this section. The fee system shall be designed to result in the collection of fees in an amount sufficient in the aggregate to reflect the reasonable costs—

(A) of developing and administering the permit program authorized under section 402 of the Clean Water Act (33 U.S.C. 1342) for coastal dischargers; and

(B) of the program for pretreatment of industrial wastes under section 307 of the Clean Water Act (33 U.S.C. 1317) for publicly owned treatment works which discharge into coastal waters.

(2) In determining costs of programs referred to in paragraph (1) for purposes of this subsection, the Administrator shall include the costs of—

(A) reviewing and acting upon applications for permits, including requests for variances and permit modifications;

(B) implementing and enforcing the terms and conditions of any such permit;

(C) monitoring activities;

(D) preparing generally applicable regulations or guidance relating to the development, establishment, and imposition of permit conditions or limitations;

(E) research directly related to the activities described in subparagraphs (A) through (D); and

(F) modeling, analyses, and demonstrations.

(3) In establishing the schedule of fees under this subsection, the Administrator shall consider the full and complete costs of program elements identified in paragraph (2), consistent with section 9701 of title 31, United States Code (relating to fees and charges for Government services).

(4) Except as provided in subsections (e) and (f), the Administrator shall collect fees from each coastal discharger under the System beginning not later than 6 months after establishment of the System.

(d) FEE SCHEDULES.—(1) The Administrator shall establish such categories, classes, types, and sizes of coastal dischargers as appropriate that shall be subject to fees under the System.

(2) The Administrator shall base the schedule of fees under the System on the following variables, taking into account the need for simplicity, and ease of implementation:

(A) The average daily volume of discharges authorized by a permit issued pursuant to section 402 of the Clean Water Act (33 U.S.C. 1342).

(B) The relative toxicity of a discharge.

(C) The ability of dischargers within a category or class to reduce the volume or toxicity of their discharges.

(D) Issues of equity among dischargers.

(E) Other factors that the Administrator considers are appropriate to meet the objectives set forth in subsection (b).

(3) In the case of a coastal State which administers a fee system applicable to coastal dischargers, the Administrator shall collect fees from each coastal discharger subject to this section in an amount equal to the difference between the amount of any fee that coastal discharger is subject to under the State system and any amount that would otherwise be collected by Federal fees from that discharger.

(4) The Administrator shall, by regulation, adjust fees under the System not less often than every 3 years, to reflect increases in the Consumer Price Index.

(5) Any person that fails to pay any amount of a fee under this section shall be liable for a penalty equal to 50 percent of the amount, plus interest on the amount computed in accordance with the provisions of title 18, United States Code, relating to interest on fines under that title.

(6) Amounts received by the United States as fees, penalties, and interest under this subsection shall be deposited in the Coastal Defense Fund established under section 602.

(7)(A) In establishing the schedule of fees under the System, the Administrator shall provide for a special hardship exemption for coastal dischargers who show that—

(i) they are unable to make the required payments without suffering undue financial hardship;

(ii) their circumstances differ materially from other coastal dischargers sufficiently to justify the granting of an exemption while requiring other coastal dischargers in the same class or category to pay the charge; and

(iii) such other factors as the Administrator considers appropriate.

(B) Exemptions granted by the Administrator pursuant to this paragraph—

(i) shall be subject to notice and public comment requirements and shall expire not later than 5 years after the date the exemption is granted, or the date of expiration of the discharge permit with respect to which the exemption is granted, whichever is later; and

(ii) may be renewed.

(e) STATE PROGRAMS.—(1) Any coastal State which administers a fee system applicable to coastal dischargers may petition the Administrator to exempt the State from the System established under this section. If the Administrator determines, after notice and and public comment, that the aggregate amount of State fees collected from coastal dischargers is equivalent to amounts that would be collected in the State under the System, the Administrator shall waive the applicability of the System to coastal dischargers in that State.

(2) The Administrator shall not exempt a State pursuant to this subsection unless fees collected by the State under its coastal discharger fee system are retained by such State and used solely to support the State's coastal water quality programs.

(f) INDUSTRIAL USERS.—Each industrial user of a publicly owned treatment works which discharges into coastal waters shall be liable for fees under the System for that use, and shall pay such fees to the Federal, State, interstate, or municipal authority responsible for controlling such treatment works. Revenues from such fees shall be retained and used by the authority solely in order to implement and enforce water quality programs consistent with the requirements of this Act. The authority shall submit such reports on receipts and expenditures under this subsection as the Administrator or the State permitting authority shall from time to time require.

(g) RELATIONSHIP TO OTHER REQUIREMENTS.—The System under this section shall be in addition to, and not in lieu of, requirements of the Clean Water Act. Nothing in this title prohibits a State or political subdivision thereof from establishing effluent fee requirements in addition to requirements of this Act. Nothing in this section

shall affect the obligation of coastal dischargers to comply with the requirements of the Clean Water Act.

(h) STUDY.—(1) The Administrator shall study the feasibility of assessing effluent fees under the System on the basis of the marginal costs of pollution abatement for each category or class of direct discharger, and for each category or class of significant industrial user of publicly owned treatment works which discharge, into coastal waters. Such study shall include the feasibility of including publicly owned treatment works in the effluent fee system. Such study also shall include an analysis of implementing a fee system for all discharges of pollutants into waters of the United States for which permits are required under section 402 of the Clean Water Act (33 U.S.C. 1342) and for other sources of pollution, such as nonpoint sources.

(2) Not later than 1 year after the date of the enactment of this Act, the Administrator shall submit a report on the results of such study, and recommendations for improving the effectiveness of the System, to the Committee on Merchant Marine and Fisheries and the Committee on Public Works and Transportation of the House of Representatives and to the Committee on Environment and Public Works of the Senate.

SEC. 605. FINES, PENALTIES, AND OTHER PAYMENTS.

(a) IN GENERAL.—Subject to subsection (b) and notwithstanding any other provision of law, any penalty, fine, or other payments assessed—

(1) pursuant to section 309 or 505 of the Clean Water Act (33 U.S.C. 1319, 1365) against a discharger into coastal waters; or

(2) under section 105 of the Marine Protection, Research, and Sanctuaries Act of 1972 (16 U.S.C. 1375);

shall be deposited into the Coastal Defense Fund established under section 602.

(b) LIMITATION.—Subsection (a) does not apply to—

(1) amounts awarded as costs of litigation pursuant to section 505 of the Clean Water Act; or

(2) amounts reserved to finance environmental credit projects.

SEC. 606. OUTER CONTINENTAL SHELF REVENUES.

Notwithstanding any other provision of law, beginning with fiscal year 1991 and for each fiscal year thereafter, the Secretary of the Treasury shall deposit into the Coastal Defense Fund established under section 602 an amount equal to 10 percent of the amount by which—

(1) all sums deposited into the Treasury of the United States pursuant to sections 7 and 9 of the Outer Continental Shelf Lands Act (43 U.S.C. 1336 and 1338) for such fiscal year; exceeded

(2) all sums deposited into the Treasury pursuant to sections 7 and 9 of that Act for fiscal year 1989.

Deposits under this section into the Coastal Defense Fund for a fiscal year shall be made not later than 60 days after the end of the fiscal year.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 2647, the Coastal Defense Initiative, is to forge a common commitment among Federal, State, and local governments to protect and preserve coastal and Great Lakes water quality for present and future generations. It does so by strengthening Federal and State water quality and coastal zone management programs, implementing long-term monitoring programs for high priority coastal waters, bolstering compliance with Federal and State water pollution control requirements for coastal areas, and providing additional funds for pollution control efforts in coastal waters.

BACKGROUND AND NEED FOR THE LEGISLATION

The Subcommittee on Fisheries and Wildlife Conservation and the Environment and the Subcommittee on Oceanography and the Great Lakes of the Merchant Marine and Fisheries Committee have examined the general subject of coastal pollution extensively for three years. This examination began with an oversight hearing

in May 1987 on the report of the Office of Technology Assessment, "Wastes in Marine Environments." Throughout 1987 and 1988 the Subcommittee reviewed in detail many aspects of coastal pollution issues, ranging from control of point source pollution in coastal waters (discharges from industrial and municipal sources), to control of nonpoint sources (including rainfall runoff from urban and non-urban areas into coastal waters), coastal wetlands protection, coastal pollution and shellfish contamination, closure of coastal recreational areas, and the role of coastal zone management in protecting coastal water quality.

The review by the Subcommittees culminated in issuance of the report entitled "Coastal Waters in Jeopardy: Reversing the Decline and Protecting Our Nation's Coastal Resources" in January 1989 (Serial No. 100-E). In total, the hearings record and the report document coastal environmental and water quality problems and point clearly to the need to strengthen coastal protection through enhanced and coordinated Federal, State, and local efforts. Thus, the purpose of the Coastal Defense Initiative is to strengthen Federal and Federally-authorized State programs to reduce coastal pollution, restore degraded coastal areas, and improve State and local land use planning from a water quality perspective. The legislation addresses the coastal pollution problem from both the water side and the land side, strengthening Federal and State programs in both areas.

Demographics are the key to the problems underlying the legislation: Americans are moving toward the coastal margin at unprecedented rates. Coastal pollution is a direct result of population growth and related development. In the last 15 years, the population living in cities and counties located within 50 miles of the coasts of the United States has more than doubled. Moreover, while the nationwide population is expected to increase 13 percent by the century's end, expected growth is considerably higher in coastal areas: 32 percent in Monroe County, Florida; 48 percent in Palm Beach, Florida; and 84 percent in the North Carolina Outer Banks. Estimates are that, by the year 2010, 127 million people will be living in coastal regions, an increase of almost 60 percent since 1960. One further point is obvious: the space available in coastal regions for that increased population is fixed.

The cumulative effects of widespread development are overwhelming the carrying capacity of coastal ecosystems, disrupting natural processes, and threatening the ecological and economic values of coastal areas. It is increasingly clear that we cannot protect coastal water quality by focusing on pipeline discharges from industrial and municipal sources alone. Estuarine and coastal waters, which provide food and spawning grounds for 75 percent of commercial fisheries in the United States, are affected and degraded by pollution from land-based sources. The clearing and excavation of land and the filling of wetlands increases the rate of runoff to coastal waters. Heavy use of fertilizers and pesticides on farms and lawns provide yet another major source of pollution. Septic and sewer systems contribute large amounts of bacteria and nutrients to surface waters and groundwaters which eventually reach coastal areas. It is no coincidence that the coastal waters with the highest levels of contamination are near large population centers.

With this background of increasing pressures of people and pollution in coastal areas, the Coastal Defense Initiative has five broad objectives:

Utilize a strengthened water quality standards program under the Clean Water Act (CWA) to stimulate the implementation of broadly focused pollution control measures for coastal waters (title II).

Enlist State programs under the Coastal Zone Management Act (CZMA) to implement necessary land use management measures to protect coastal waters (title III).

Implement long-term monitoring programs for high priority coastal waters (title IV).

Improve compliance with pollution control requirements in coastal areas through tougher sanctions and environmental audits (title V).

Provide additional funds for State, local, and Federal water pollution control and coastal zone management efforts in coastal areas (title VI).

COASTAL WATER QUALITY IMPROVEMENTS

The Coastal Defense Initiative proposes to strengthen programs under the Clean Water Act (CWA) to address high priority coastal waters and to increase control over nonpoint sources of pollution.

Broadly speaking, the CWA consists of two major parts. First are provisions for financial aid to construct municipal sewage treatment plants; these are not addressed in the Coastal Defense Initiative. Second are regulatory provisions. The tools which comprise these regulatory provisions consists of two separate but complementary elements: (1) technology-based standards and discharge limitations promulgated for various industries by the Environmental Protection Agency (EPA); and (2) water quality standards adopted by States, based on EPA guidance. In effect, water quality standards serve as the benchmark for determining whether specific technology-based pollution requirements imposed on industrial and municipal sources must be tightened to attain the objectives of the Clean Water Act.

Both EPA and the States have generally used water quality standards and technology-based controls to limit pollution from industrial and municipal sources of pollution. These are termed "point" sources under the CWA, because wastes are discharged from discrete pipes, channels, etc. Considerable progresss has been made in regulating point sources, and EPA believes that industries are now more than 95 percent in compliance with the law.

EPA and the States have focused to a much lesser extent on "nonpoint" sources, such as runoff from agricultural and urban areas. Making the link between a specific nonpoint source and violations of water quality standards is generally more difficult than with point sources. In addition, since the CWA contained statutory deadlines for controlling pollutant discharges from industries and cities, but no similar mandates for nonpoint source controls, it was logical to focus on point sources first. Nevertheless, uncontrolled nonpoint sources are believed to be responsible for as much as 60 percent of current water quality problems nationwide and an

equivalent or possibly larger portion of coastal water quality degradation.

Thus, the Committee has concluded that it is critical to address the many pollution sources that are contributing to current and anticipated coastal water quality problems. The Coastal Defense Initiative does so by fine-tuning the regulatory tools available under the Clean Water Act—particularly water quality criteria developed by EPA and water quality standards adopted by States—to focus on pollutants of key concern in coastal waters.

COASTAL WATER QUALITY CRITERIA

Based on evidence presented at several previous hearings, the Committee concludes that the water quality standards program for coastal waters has lagged substantially behind the technology-based permitting program and that, in turn, development of criteria for marine organisms has lagged behind freshwater criteria values. One of the basic building blocks of the water quality standards program is the issuance of aquatic criteria that States can—and do—use for promulgating State water quality standards. The Committee believes that the essential first step in building a more effective coastal water quality standards program is to broaden the array of criteria from which States may work when they adopt water quality standards.

Accordingly, title I of CDI requires EPA to issue or revise criteria for pollutants of concern in marine and estuarine settings on an accelerated schedule. Section 202(a) of the legislation includes a list of 21 pollutants for which water quality criteria must be issued within two years of enactment. The list represents many of the pollutants that have been associated with pollution problems in major estuarine areas of the United States. The list oriented to those pollutants that have appeared repeatedly in the sediments of these areas, and it may not adequately represent those pollutants occurring in the water column itself.

The Committee recognizes that the list may need further technical refinement to ensure that all high priority pollutants are included. The Committee has requested recommendations from EPA, in conjunction with other technical experts, on how best to modify the list. As those recommendations are forthcoming, the Committee intends to seek additional modifications to the proposed list during further legislation action on H.R. 2647.

Under section 202, EPA is also directed to issue biological and sediment criteria for assessing coastal water quality. The Committee is aware of the efforts now underway within EPA to develop reliable measures of aquatic health through the use of "biocriteria." These biological criteria may serve as important complements to the chemical-specific criteria that have driven the water quality standards program in the past. They might also serve as important tools to help broaden the focus of the water quality standards program to encompass nonpoint sources. The traditional chemical-specific criteria may be partially or wholly blind to episodic pollution that does not comport with the temporal components of the criteria (which typically set pollutant limits over a finite period of time, such as 24 hours), to alterations in physical

habitat, or to cumulative effects of a mix of pollutants. Properly developed and implemented, biological criteria and standards should provide a reliable method to assess the overall integrity of aquatic ecosystems and sidestep the limitations of traditional criteria. They also may be less expensive to implement since the field surveys necessary to characterize biological communities may be less costly than performing a full array of laboratory analyses to detect the presence and levels of individual chemicals.

Finally, the Committee also believes that efforts should be made to develop and implement reliable measures of sediment quality. Testimony from previous hearings conducted by the Committee describes instances where the traditional water column criteria indicate that all is well, but where the fish are dead or contaminated. This is a particular problem in the Great Lakes. The Committee believes that development of reliable measures of sediment quality will go a long way to closing this gap between water quality criteria and total water quality health. Through the directive regarding sediment criteria, the Committee intends to give statutory emphasis to EPA's current effort to develop biological and sediment criteria. The availability of scientifically and technically sound criteria will benefit a wide range of water quality and environmental activities—from individual permitting decisions to determining remedial programs at hazardous waste sites.

COASTAL WATER QUALITY PLANNING AND IMPLEMENTATION

In addition to expanding the array of marine and estuarine criteria from which States are to promulgate water quality standards, CDI also seeks to strengthen the basic water quality planning and implementation program under title III of the Clean Water Act in several respects.

The current requirements of the water quality planning provisions in section 303 of the Clean Water Act suggest that States can only impose additional control measures to reduce pollution loads from point and nonpoint sources through wasteload and load allocation processes detailed in section 303(d). The simple fact is that, with a few exceptions, neither States nor EPA has done broadly based load allocations because of the enormous cost, complexity, and time required.

The complexity of the traditional wasteload allocation process renders a complete reliance on it inappropriate as a precondition to requiring pollution control measures for nonpoint sources. The Committee therefore adopted in the new section 304(n) of the Clean Water Act—as proposed in title II—a two tiered approach to deciding what types of pollution control measures ought to be required to circumvent the shortcomings of the wasteload allocation process.

Under new section 304(n), States are to develop comprehensive coastal water quality protection programs. The Committee intends the first tier of responses under this program to require implementation of basic enforceable pollution control measures that will be necessary to restore, protect, and maintain water quality standards in waters not achieving applicable water quality standards or designated uses. The Committee further intends this first tier to be a relatively simple alternative that avoids the complexity—and pit-

falls—of the traditional wasteload allocation process. The Committee contemplates that these control measures will be characterized by "off-the-shelf," readily accepted methods to reduce pollution applicable to entire classes or types of activities within a given area.

Through this approach State authorities will be able to avoid the unnecessary and expensive requirements to documents specific cause and effect relationships between water quality impacts and individual sources. The Committee received extensive testimony on the need for and ability to document these cause and effect relationships, and from it draws two broad conclusions that apply to the requirements of titles II and III, which call for measures to control water pollution from land-based activities. First, there is widespread agreement among the technical experts on the basic types of land uses that pose water quality problems. Second, there is also general agreement that the empirical evidence of actual causal links between a particular activity and water quality impacts is very difficult to obtain, at best, and is frequently available only after investments of enormous time and money. By authorizing the imposition of a basic set of measures to control sources of water pollution without going through the complicated wasteload allocation process, State authorities will avoid these pitfalls.

The Committee intends the second-tier approach to water quality planning to apply to high-priority impaired waters which present more intractable problems. Throughout the legislation, "high priority" is intended to refer to those coastal waterbodies for which States ought to, and must, devote additional remedial efforts because of their potential ecological value and the degree to which designated uses are not likely to be achieved through the first-tier approach. This second tier will require coastal States to target those high priority waters and expend the resources, time, and effort to develop detailed load and wasteload allocations for those waters, in accordance with the general approach now authorized by section 303(d) of the Act. Preserving this approach represents the Committee's conclusion that it can serve a very important water quality planning function, but that its cost and complexity renders it appropriate only in limited circumstances.

POLLUTION CONTROL MEASURES

The Coastal Defense Initiative seeks to use pollution control measures, including best management practices, to guide States and localities in methods to reduce or control nonpoint sources of pollution that may affect coastal waters. The Committee's fundamental objective underlying section 207 of the legislation is to require EPA to develop technical guidance on the best available pollution control measures for nonpoint sources. This guidance would serve as a basic "cookbook" of alternatives that State and local officials could use as they fulfill their water pollution control obligation under this Act and the Clean Water Act.

Section 203 of this Act requires States to develop and implement a coastal water quality protection program and title III requires State coastal zone programs to develop Aquatic Resources Protection Programs. A major component of both programs entails the use of measures to reduce pollution loads from a wide range of

sources, including nonpoint sources. These requirements will confront State and local officials with new, significant challenges to comprehensive water quality planning and implementation which will stretch current capabilities. To help State and local officials meet these challenges and adhere to the requirements and schedules that they impose, the Committee believes that EPA must, in conjunction with other agencies, pull together the best technical information they can muster to assist in this task.

In one sense, section 207 requires EPA to develop the equivalent of technology-based controls for nonpoint sources, as it has done for point sources under other Clean Water Act provisions. The Committee does not intend the same level of specificity for these measures as EPA developed for the point source effluent limitation guidelines under section 304 of that Act. Further, unlike those guidelines, the pollution control measures developed under this section will not be directly or automatically applicable to categories of nonpoint sources. The Committee expects that many States will use the measures and techniques identified and quantified by EPA when States or localities implement specific coastal water quality protection plans.

POLLUTION TRADING AND OFFSETS

Section 203 directs States to include in their Coastal Water Quality Protection Programs an enforceable system for allocating and exchanging discharge credits and pollution offsets among point sources and between point and nonpoint sources of pollution into coastal waters.

The trading system envisioned under section 203(a) is intended to provide private individuals with the opportunity to develop controls on nonpoint and point sources. Their basic incentive to do so is financial. Through it, they can save money that they might otherwise have to spend on pollution abatement by persuading (or paying) others to reduce their own sources of pollution, which they presumably can do more cheaply. Ideally, the outcome is more pollution control and less money spent.

The Committee seeks through this requirement three objectives. First, it desires to promote efficiency in the control of pollution. If individual sources are able to exchange credits among themselves, they are likely to reduce the overall costs of pollution control without reducing pollution control itself.

Second, the Committee seeks to provide a mechanism by which more effective controls can be extended to sources of pollution other than the point sources that are the traditional—and administratively convenient—target of pollution control efforts. Nonpoint sources are a major—and in some cases the major—source of pollution into our estuaries. They are also generally not subject to effective pollution control measures, due in part to the historic inability of Federal and State authorities to develop an administratively and politically feasible approach to controlling these sources. Yet, the ability to reduce pollution loads from traditional point sources is diminishing rapidly, and the cost of those reductions promise to skyrocket. In short, the regulators will be asking people to spend

more money for less results, while ignoring the major remaining problems.

The third objective stems from the second. By allowing private parties to develop enforceable methods to control nonpoint sources, it may well turn out that administrative techniques and approaches are developed that could be of enormous utility to public authorities later on. In short, the creativity that could be unleashed by a properly designed trading system might produce approaches that benefit everyone later.

The Committee is aware of the reservations of some to this approach and has made every effort to respond to them. Some have correctly questioned the ability to quantify nonpoint source loadings and have therefore questioned the reliability of a system of trades involving these sources. The Committee believes the point is legitimate, and has therefore adopted a 2-for-1 ratio involving trades between point and nonpoint sources to ensure that the system errs on the side of caution.

Others have questioned the ability to monitor or enforce compliance with the terms and conditions of agreed-upon trades. Again, the Committee believes this is a legitimate point and one that can be addressed adequately through proper design and implementation. The Committee also imposes the burden of proof on questions of compliance with those who are participating in the trades.

The Committee emphasizes that the system of exchanges required by this program is not intended, and may not be used, to undercut or avoid the fundamental technology-based requirements established by the Clean Water Act. In short, the only pollution reduction obligations that may be subject to the exchanges are those generated by or through the water quality standards program under title III of that Act.

CONSULTATION AND COORDINATION

Throughout the provisions of titles II and III of the Coastal Defense Initiative, the Committee calls for enhanced consultation, cooperation, and coordination between and among Federal, State, and local agencies with expertise and responsibilities for coastal water quality, habitat protection, and resource management.

For example, section 202 directs EPA to consult with the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish and Wildlife Service (F&WS) when developing water quality criteria for coastal waters. Both NOAA and the F&WS have developed extensive expertise on the impact of pollution on the fish and wildlife resources which depend on healthy freshwater and marine ecosystems. The Committee has heard repeated criticisms that EPA's criteria are far too oriented to public health issues—at the expense of the fish and wildlife resources of the nation and despite clear directives in the Clean Water Act that protecting these living resources is a coequal goal of the Act. The mandatory consultation requirement is intended to offset this historical orientation and to ensure that the criteria reflect the best available scientific information and expertise.

The need for coordination is also a factor in the efforts to enlist State coastal zone management authorities in protection and re-

storing coastal water quality. Through the new separate coastal water quality program in section 304(n), the Committee intends to weave together the existing efforts in the Clean Water Act (for example, those concerning toxic control strategies, nonpoint source management, and estuarine management) and the Coastal Zone Management Act to address coastal water quality problems. The strength and success of the "weave" will depend very much on the ability of separate State programs to coordinate. Therefore, section 203 of CDI, which directs States to develop the "umbrella" Coastal Water Quality Protection Programs, requires that the program be developed, submitted and implemented jointly by the State water quality authorities and the State coastal zone management authorities. The process for developing the new element of State coastal programs, discussed below, also requires the joint participation of State water quality programs. These requirements are important tools to increase the successful integration of water pollution control efforts and coastal zone management efforts at the State and local level.

By joint implementation, the Committee does not intend to produce paralysis. Everyday activities that are properly within the exclusive ambit of a coastal zone agency or a water pollution control agency and that do not and should not affect the responsibilities of the other agency need not require concurrence. Conversely, those actions of one program that will—and should—affect directly the responsibilities of another program ought to be properly integrated with that other program. In short, the degree of coordination should reflect the degree to which the actions of one program may affect the responsibilities of another program. Where, for instance, the process for designing or adopting a remedial program for a bay or estuary entails establishing a broad array of measures to reduce pollution from a variety of sources, that process should intimately involve both water pollution control programs and coastal land use programs.

Section 203 also requires joint approval, by EPA and NOAA, of the Water Quality Protection Programs developed by States. The Committee is aware that the institutional tensions that have plagued State water quality and coastal zone programs can also occur at the Federal level. The requirement for joint program approval is intended to encourage the agencies to establish and institutionalize permanent working relationships. The Committee contemplates that EPA and NOAA will develop a detailed agreement assigning lead review responsibilities between them to avoid unnecessary and potentially troublesome duplication in fulfilling this dual approval requirement.

COASTAL ZONE MANAGEMENT PROGRAMS

The Coastal Defense Initiative enhances provisions of the Coastal Zone Management Act of 1972 (CZMA) to address coastal water quality. This has been done in recognition that the CZMA is the best Federal program directed at regulating land use in the coastal zone and that land uses are contributing greatly to coastal water quality degradation. The regulation of land uses to protect coastal waters was an original and central objective of the CZMA; but it

has not been emphasized as much as other aspects of the CZMA. This objective is reflected clearly in the following excerpt from the Merchant Marine and Fisheries Committee's report on the 1972 Coastal Zone Management bill (H. Rept. No. 92-1049, to accompany H.R. 14146):

> The purpose of limiting the inland reach is to restrict the operation of this legislation t its *basic underlying purpose, that is, the management and the protection of the coastal water.* It would not be possible to accomplish that purpose without to some degree extending the coverage to the shorelands which have an impact on those waters (emphasis added).

The requirement in the Coastal Defense Initiative that each State develop an Aquatic Resources Protection Program is a recognition that this "basic underlying purpose" has not been fulfilled. States are not entirely to blame, however. A lack of Federal leadership and oversight, plus inadequate funding, have contributed to this failure. Further, as witnesses testified at the Subcommittees' hearings, there is no clear national mandate for the coastal zone management program to address nonpoint source pollution, which has become the leading cause of water quality degradation in many coastal water bodies.

The Coastal Defense Initiative represents the first time since enactment of the CZMA that States will be required to develop a significant new component of their coastal zone management programs. State coastal zone management agencies will be required to identify and implement measures (such as setbacks, building density restrictions, and sedimentation controls) for activities which cause or contribute to the failure to achieve applicable water quality standards, or which are necessary to protect and restore water quality and aquatic resources in critical coastal areas. Through these requirements, the Committee affirms that State coastal programs ought to play a major role in developing and implementing measures to control and land-based sources of pollution.

Several witnesses asserted that title III ought not to shift the basic responsibility of protecting water quality and achieving water quality standards away from state water pollution control authorities, or make State coastal programs responsible for setting water quality standards or ensuring that those standards are achieved.

The Committee agrees with both comments. The principal obligation to develop and implement a water quality standards program is directed by the Clean Water Act to States, and the Governors have delegated those functions to State water pollution control authorities. It is they who establish water quality standards, and they who have the obligation to ensure that the designated uses of State coastal waters are achieved and maintained. Nothing in the Aquatic Resources Protection Program called for by title III is intended to alter those basic responsibilities.

However, it is absolutely the function of title III to enlist the capabilities and authorities of State coastal programs in the overall effort to attain and maintain coastal water quality. As such, the Committee intends that State coastal programs should become one of the several options that State officials turn to in developing and

implementing the measures to protect coastal water quality. In reaching this conclusion, the Committee rejects the argument that water quality problems are not something State coastal programs should be concerned with. Quite the opposite. Coastal water quality is—and ought to be—very much the province of these programs.

MONITORING

The Committee believes that the pollution reduction programs provided in the water quality and coastal zone portions of the legislation must be supplemented by coastal water quality monitoring. In particular, these monitoring efforts must relate to regulatory objectives and produce reliable, useful information on environmental trends in coastal waters. Past water quality monitoring programs have frequently suffered due to inadequate focus on goals and strategies that would assist water quality and land use managers in implementing pollution control programs.

Results from coastal water quality monitoring programs established under the Coastal Defense Initiative will be used by regulatory authorities to fine-tune the pollution reduction programs and to determine progress in achieving the goals of the legislation. Further, these programs are expected to provide more integrated, systemwide assessments of the health and productivity of marine environments than have previous coastal monitoring programs.

Through the provisions of title IV of CDI, the Committee is responding to criticisms concerning the failure of much of the nation's current marine environmental monitoring efforts. Based on testimony at hearings and other evidence, the Committee is convinced that all too often marine environmental monitoring programs are poorly designed, using technology that is inappropriately applied; are poorly coordinated with related research programs in a region; and fail to produce information that will answer specific questions about what is happening to the health of marine ecosystems. Moreover, the price tag for these programs—at least $133 million annually—is enormous (though small in comparison with overall pollution control expenditures) and must be spent more wisely and efficiently.

The Committee is aware of the findings and conclusions of a recent National Research Council report, entitled "Managing Troubled Waters, the Role of Marine Environmental Monitoring," which recommends comprehensive monitoring of regional and national status and trends and improved monitoring program design that will make information products more useful to all interested parties.

As a part of the larger report, the National Research Council also looked at the existing monitoring efforts in the Southern California Bight, estimated at $17 million annually. Its findings underscore the need for title IV of the bill:

> The [committee] found that because monitoring in the Bight is predominately organized around discharge permits responding to water quality regulations, there is a fragmented approach to assessing environmental quality. There are deficiencies in monitoring for public health concerns and nonpoint source discharges. Also, there are no

existing formal mechanisms for integrating the wide array of monitoring activities and their findings; as a result, it is difficult—if not impossible—to present a coherent picture of the state of the Bight as a whole. There is a glaring need for a regionwide monitoring system and for effectively reporting findings to the public, the scientific community, and policy makers.

Responding to reports and evidence such as this, the Committee is calling for regionwide coastal water quality monitoring systems that will report findings more effectively to the public, the scientific community, and policy makers. The provisions of title IV of the Coastal Defense Initiative establish regional monitoring programs to be coordinated among local, State, and Federal agencies and which are intended to integrate regulatory, data, and management needs.

ENFORCEMENT AND COMPLIANCE

The Committee's legislation further provides that the tools and programs established to protect coastal water quality will be supported by strengthened compliance and enforcement authorities. The Committee believes that meaningful enforcement is essential, if regulatory and other requirements of environmental laws are to be fully implemented. Thus, for example, the bill directs that sources, including Federal facilities, which contribute to coastal water quality degradation will be subject to sanctions, including requirements for audits of the environmental components of their operations to bring noncomplying facilities back into compliance with laws.

Federal facility compliance is a key concern that the Committee has addressed through provisions of section 504 of CDI. The Committee intends to provide EPA the necessary authority to enforce the requirements of this Act against recalcitrant Federal departments and agencies. According to a recent General Accounting Office (GAO) report on Federal compliance with the Clean Water Act (GAO/RCED–90–13), Federal facilities' rate of noncompliance with priority program requirements of that Act is twice that of non-Federal industrial facilities. GAO attributes this poor performance record to the low priority that Federal facilities have assigned to compliance with pollution discharge requirements.

The Committee finds that there is no constitutional impediment to providing EPA the authority to issue administrative orders and assess administrative penalties against other Federal agencies. The Committee requires that Federal departments and agencies comply with the new requirements, but under section 504 EPA will have the authority to enforce the requirements if necessary.

In addition, the Committee believes that those who develop and implement coastal water quality protection programs—both EPA and the States—must be accountable if those programs are found to be unsuccessful. Consequently, section 203(c) of the legislation modifies the enforcement provisions of the Clean Water Act in three key respects. First, it makes EPA approval of a State's coastal water quality protection program subject to judicial review, just as a State's action in developing and submitting a program is to be

enforceable. Second, it requires EPA to bring an enforcement action against any coastal State that has failed to develop, implement, or enforce the requirements of a coastal water quality protection program. Third, it adds a parallel section to the citizens suit provision of the Act.

While the Clean Water Act already provides that individual sources can be subject to sanctions for violations of discharge permits or similar requirements, the Coastal Defense Initiative will direct EPA to take enforcement action against a coastal State that fails to implement provisions of this legislation and authorizes citizen suits for the same purpose. The Committee regards this as the suitable counterbalance to the basic approach in titles II and III to provide broad discretion to States in deciding how best to protect water quality.

FUNDING COASTAL WATER QUALITY PROGRAMS

The hearings and review by the Subcommittee have documented the increasing pressures on coastal environmental quality—particularly water quality—posed by rapid growth and development in coastal areas. Experts generally agree that protecting clean water and cleaning up waters that are no polluted will require dedicated and sustained investments at all levels of government.

Given the current and expected continuing budgetary restraints, it is unlikely that sufficient increases in Federal appropriations from the General Treasury will be forthcoming, even for a problem as serious as coastal pollution. In fact, Federal support for water quality and coastal zone management programs has eroded over the last decade, while new program requirements have placed additional demands on Federal, State, and local officials. Hence, we have increasing needs and fewer Federal dollars available to meet those needs.

This disparity between needs and dollars has generated interest in alternative sources of revenues for coastal programs. Funding for State and local water quality programs has historically come from two principal sources: State general revenues and Federal grants-in-aid. Beyond these traditional sources, however, other alternative funding mechanisms are being examined, including fees, dedicated funds, and fines.

States have led the way in exploring opportunities for alternative means of financing water quality programs. According to a survey conducted by the National Governors' Association in 1989 ("Funding Environmental Programs: An Examination of Alternatives"), more than half of the States already use revenues from fees, fines, and dedicated funds to support ongoing water quality programs and activities. The Committee applauds these initiatives and the leadership that States continue to demonstrate in this area.

The Committee believes that the Federal Government has a responsibility to do more than merely suggest how States and localities can address funding problems on their own when the requirements are imposed by the Federal Government. In the Committee's view, the Federal Government also has a responsibility to establish

and implement financing alternatives providing revenues to support programs carried out by all levels of government.

Therefore, the Coastal Defense Initiative includes provisions to support coastal water quality programs through effluent fees assessed against coastal dischargers. The primary objective of the coastal effluent fee system contained in the legislation is to recover the costs of administering the major permit and industrial pretreatment programs applicable to coastal dischargers. The coastal effluent fee system is modest—it seeks only to collect amounts that will cover certain coastal water quality program costs—but is nonetheless significant. The legislation will ensure that industrial sources which discharge pollutants into coastal waters, and impose costs requiring development of pollution reduction programs, will provide financial support for those programs.

COMMITTEE ACTION

H.R. 2647 was introduced on June 14, 1989, by Mr. Studds, Mr. Hughes, Mr. Pallone, Mr. Bennett, Mrs. Unsoeld, Mr. Saxton, and Ms. Schneider and was referred to the Committees on Merchant Marine and Fisheries and Public Works and Transportation. On June 27, the bill was referred in the Merchant Marine and Fisheries Committee to the Subcommittee on Fisheries and Wildlife Conservation and the Environment and the Subcommittee on Oceanography and the Great Lakes. Twenty-four additional Members had joined as co-sponsors of H.R. 2647 by April 18, 1990: Mr. Beilenson, Mr. Frank, Ms. Pelosi, Mr. Roe, Mr. Hochbrueckner, Mr. Borski, Mr. Smith of New Jersey, Mr. McDermott, Mr. Walsh, Mr. Neal of Massachusetts, Mr. Dwyer of New Jersey, Mrs. Collins, Mrs. Saiki, Mr. Rowland of Connecticut, Mr. Eckart, Mrs. Smith of Florida, Mr. Atkins, Mr. Torres, Mr. Scheuer, Mr. Owens of Utah, Mr. Florio, Mr. Kennedy, Mr. Manton, and Mr. Hutto.

On June 27, 1989, the Subcommittees on Fisheries and Wildlife Conservation and the Environment and Oceanography and the Great Lakes held a joint hearing on H.R. 2647. Testifying were Ms. Rebecca Hanmer, Acting Assistant Administrator for Water, U.S. Environmental Protection Agency (EPA); Mr. Kent Burton; Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administraion (NOAA); Mr. Robert Perciasepe, Deputy Secretary, Maryland Department of the Environment and Mr. William Eichbaum, attorney and consultant. This initial hearing sought the witnesses' assessment of coastal water quality problems and the applicability of the themes and provisions of H.R. 2647 in addressing these problems.

Witnesses at the first hearing offered preliminary comments on the legislation and agreed that it was a good starting point.

Ms. Hanmer said that the major causes of coastal pollution are land-based point and nonpoint sources, coupled with the effects of population growth and associated development. While the legislation focuses on numerous pressing issues, Ms. Hanmer said that a number of programs and authorities already exist to address many of them.

Mr. Burton said that atttacking the problems of coastal pollution will require a long-term coordinated Federal-State approach, much

as NOAA and EPA have recently been developing to improve coastal water quality. Mr. Perciasepe expanded this point by saying that, from the perspective of one prominent coastal area—the Chesapeake Bay—it is apparent that successful programs must recognize the unique circumstances and characteristics of States and regions and also require ample regional involvement, including fiancial commitments by Federal, State, and local entities in the affected region.

Mr. Eichbaum supported the initiative in the legislation to link authorities of the Coastal Zone Management Program to improving water quality programs administered by EPA and the States. He supported the concept of a national system of monitoring coastal waters but urged that it allow flexibility for intensive monitoring in certain areas, such as Narragansett Bay or Puget Sound, and allow for less intense monitoring in other areas.

On September 20, the Subcommittees held a second hearing on H.R. 2647 and focused on titles II and III of the bill, pertaining to coastal water quality and coastal land use. Testifying were Mr. Armando J. Carbonell, Executive Director, Cape Cod Planning and Economic Development Commission; Mr. David R. Godschalk, Professor of City and Regional Planning, University of North Carolina; Mr. Todd Miller, Executive Director, North Carolina Coastal Federation; Ms. Sarah Chasis, senior staff attorney and director, Coastal Project, Natrual Resources Defense Council; Mr. Chris A. Shafer, Chairman, Coastal States Organization, and Chief, Great Lakes Shoreland Section, Michigan Department of Natural Resources; Mr. Robert Moore, Assistant Deputy Commissioner, Department of Environmental Protection, State of Connecticut; Ms. Rebecca Hanmer, Acting Assistant Administrator for Water, EPA; and Ms. Virginia K. Tippie, Acting Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA. As at the June 14 hearing, EPA and NOAA witnesses said the Administration had not yet taken a position on the bill.

Each of these witnesses addressed whether it is feasible and desirable to link coastal zone management and coastal land use to the achievement of water quality standards. Mr. Carbonell said that Waquoit Bay on Cape Cod demonstrates that such a linkage is both feasible and desirable, as examplified by implementation of a regional policy plan under the Cape Cod Commission Act, which incorporates each of these elements.

Professor Godschalk concurred that effective coastal water quality improvements depend on local growth management. The Federal role, he said, should be to provide leadership to local governments in meeting growth management needs. Whatever control plan or strategy is adopted, he urged that diffuse nonpoint pollution sources be included in land use management actions.

Mr. Miller said that the quest to develop sound water quality standards, as provided in the legislation, is a worthy goal, but that interim controls can and should be implemented to protect and maintain water quality where pollution problems and sources are known even while scientists pursue the complex and difficult job of developing water quality standards.

Mr. Moore, representing the Association of State and Interstate Water Pollution Control Administrators, said the bill has many

good concepts, but that elements such as planning provisions should build on, rather than duplicate, existing programs. Like Mr. Miller, he said that implementation of numeric water quality standards should not be considered the single or most important tool for managing water quality. A variety of activities, such as eliminating combined sewer overflows and providing advanced treatment at point sources, can proceed while numeric standards are being developed.

Ms. Chasis endorsed the portions of the bill calling for development of coastal pollution control strategies to be adopted both by State water quality and coastal zone management agencies. However, she suggested that provisions calling for designation of outstanding coastal resource waters should be expanded and strengthened to include more criteria for designation. She also urged that monitoring programs be coordinated under a national system and not be split into isolated segments.

Mr. Shafer said that the Coastal States Organization agrees with the direction of the legislation and that this emphasis is long overdue. A key consideration recognized in the legislation is the need to control nonpoint source pollution—a by-product of land use—through clear, workable directives to coastal zone management and water pollution control programs. However, he raised concerns about the feasibility of the legislative proposal to allow trades between point and nonpoint sources of pollution.

Ms. Hanmer commented on provisions in the legislation for Federal promulgation of water quality criteria which would automatically become State standards. She said that the existing approach in the CWA, consisting of Federal criteria guidance, followed by State promulgation of water quality standards, is more workable than what the legislation proposes. On the importance of land uses and nonpoint source pollution, she said that the legislation is correct in focusing on best management practices that involve land use changes and control of new land uses in the coastal zone.

Ms. Tippie said that the legislation's focus on nonpoint sources is very appropriate. Concerning criteria and standards, she said that NOAA sees the need for both pollutant-specific criteria and nonchemical-specific or biological criteria, which often are better indicators of ecosystem health. The portion of the legislation calling for certification of coastal water quality protection plans should be clarified, she said, to provide better coordination between coastal zone and water quality activities—for example, through one certification process rather than two.

On October 19, 1989, the Subcommittees held a hearing on funding coastal water quality programs, particularly title VI of H.R. 2647. Testifying were Dr. Alan Krupnick, Fellow, Resources for the Future; Dr. David Montgomery, Assistant Director, Natural Resources and Commerce Division, Congressional Budget Office; Dr. Paul Levy, Executive Director, Massachusetts Water Resources Authority; Mr. Eric Evenson, Director, Division of Water Resources, Department of Environmental Protection, State of New Jersey; and Mr. Fred Olson, Deputy Director, Department of Ecology, State of Washington.

Dr. Krupnick endorsed the concept of an effluent fee system as a means of giving dischargers an incentive to reduce pollution. Expe-

rience in Europe, notably West Germany, has demonstrated that such a system encourages development of innovative control techniques. He urged that the fee system proposed in the bill include municipalities and nonprofit sources, as well.

Dr. Montgomery said that preliminary Congressional Budget Office analyses indicate that an annual charge of 1.4 cents per gallon of processed wastewater would generate revenues totaling $100 million. Such a low fee, he said, would thus achieve the monetary goal in the legislation but is probably too low to encourage sources to reduce discharges rather than paying the fee.

Mr. Levy said that a national fee system is a good idea, in part because it would eliminate problems resulting when one State imposes fees, but its neighbors do not. He urged that the legislation clearly not preempt fees that a State might impose in addition to the basic fees under a Federal system.

Mr. Evenson likewise suggested that in States which currently collect fees, the State fee should take precedence over the Federal fee and the system should provide a total cap on fees which can be collected from each discharger.

Mr. Olson said that improving and protecting water quality is a shared Federal, State, and local responsibility. To that end, he described Washington State's wastewater discharge permit fee, which, with other State revenues, contributes about one-third of estimated revenue needs for water quality programs. Because of the significance of nonpoint sources to coastal land use and water quality concerns, ways also should be sought to fund nonpoint pollution control programs, he stated.

Following these hearings, a draft substitute to the bill was prepared by the Subcommittees. It strengthened provisions which link coastal water quality and coastal land use programs, using both to address high priority coastal waters and the variety of land-based activities which can adversely affect water quality.

On March 6, 1990, the Subcommittees held a fourth hearing on H.R. 2647, focusing on the draft substitute to the bill. Testifying at this final hearing were Mr. Tudor Davies, Director, Office of Marine and Estuarine Protection, EPA; Mr. Timothy R.E. Keeney, Director, Office of Ocean and Coastal Resource Management, NOAA; Mr. Langdon Marsh, Executive Deputy Commissioner, Department of Environmental Conservation, State of New York; Mr. Erwin Odeal, President, Association of Metropolitan Sewerage Agencies (AMSA); Ms. Jessica Landman, senior project attorney, Natural Resources Defense Council; and Mr. Jeffrey M. Gaba, Associate Professor, Southern Methodist University School of Law.

Mr. Davies said that any new statutory provisions should allow sufficient flexibility for State and local governments to focus on geographic targeting of activities and areas that are threatened and in need of protection. A bill also should focus on implementing controls on sources that are causing the most serious impacts in those areas, such as nonpoint sources, combined sewer overflows, and stormwater discharges. He said that EPA supports the monitoring goals outlined in title IV of the bill but urged that the goals be stated more clearly. EPA has concerns, he said, that the environmental auditing provisions in title V are overly broad and that provisions in title VI may not adequately protect State prerogatives

for establishing fee systems. He concluded by stating that the Administration does not support the Fund, the diversion of outer continental shelf revenues and fines and penalties to the Fund, or the grant and fee system proposed in H.R. 2647

Mr. Keeney testified that NOAA opposes the legislation, disagreeing with aspects of title III, concerning coastal zone management programs. NOAA's particular concerns, he said, include provisions in the bill specifying requirements in State programs, unrealistic deadlines for program development, overlap with title II requirements, and proposed decertification of approved State programs as a penalty for noncompliance with the new provisions.

Mr. Marsh said that, while the bill already requires EPA to identify pollution control performance standards for nonpoint sources, it should be modified to require EPA to update existing technology-based regulatory requirements (a provision not in the bill), to maximize water quality improvements. He also said that New York opposes the provision in the bill to allow point and nonpoint sources to trade discharge requirements, based on concerns that the system would be difficult to administer and enforce. Professor Gaba, on the other hand, strongly endorsed the concept and said it is possibly the only way to effect control of nonpoint sources. He also pointed out that, as drafted, the bill did not address the consequence of EPA's disapproval of a State's program. He suggested that the bill prohibit issuance or renewal of permits for discharges into coastal waters, if a State fails to adopt an approvable coastal water quality program.

Mr. Odeal said that new statutory requirements should be developed in concert with ongoing Clean Water Act programs and initiatives. He also testified that AMSA believes that funds provided from the Coastal Defense Fund should be directed solely to planning activities and water quality efforts (not to capital projects) and as an addition to, but not a replacement for, Federal funds.

Ms. Landman recommended that the relationship of requirements and deadlines in titles II and III of the bill be clarified and that it be made clear that existing Clean Water Act requirements be preserved such as EPA's duty to act where a State's actions are deficient. She also suggested that auditing provisions in title V be strengthened to apply to all environmental media, to avoid the possibility of dischargers shifting wastes from one medium (water) to another (land, for example).

The Subcommittees met in joint session on April 4, 1990, to consider H.R. 2647.

Mr. Studds offered an amendment in the nature of a substitute to H.R. 2647, which made a number of clarifying and technical changes throughout the bill. The amendment was adopted by voice vote.

Mr. Saxton offered an amendment, on behalf of himself, Mr. Manton, and Mr. Hughes, which was approved by unanimous voice vote, concerning ocean discharge criteria. The amendment would expand section 403 of the Clean Water Act to include discharges into estuarine waters and directs EPA, when issuing ocean discharge permits, to determine that there is a need for the discharge.

Mr. Pallone offered an amendment, adopted by unanimous voice vote, directing EPA and the Coast Guard to conduct a study of

pumpout facilities needed to handle marine sanitation devices from vessels and the type of marinas and ports where such facilities should be located.

Mr. Brennan offered an amendment, adopted by unanimous voice vote, to title IV concerning coastal water quality monitoring programs. The amendment clarifies that Regional Coastal Water Quality Monitoring Teams established under the provisions of title IV are to focus monitoring efforts on high priority coastal waters and are to tie those monitoring programs to the water quality regulatory objectives of the particular coastal waterbody.

Mr. Goss offered an amendment, adopted by unanimous voice vote, to expand the study mandated in title VI, to examine the feasibility of including other sources of pollution, such as nonpoint sources, in the effluent fee system established in the bill.

The Subcommittees then reported H.R. 2647, as amended, to the full Committee by unanimous voice vote.

On April 18, 1990, the Committee on Merchant Marine and Fisheries met to consider H.R. 2647, as reported by the Subcommittees, and ordered the bill reported to the House of Representatives by voice vote after adopting five additional amendments.

Mr. Studds offered en bloc 18 technical amendments to the bill as approved by the Subcommittees. The package of technical amendments was adopted by voice vote.

Mr. Manton offered an amendment, on behalf of Mr. Hughes, Mr. Saxton, and himself, directing EPA to update and revise its guidance on the ocean discharge criteria issued under section 403 of the Clean Water Act. The revisions are to reflect the modifications to section 403 which the Subcommittees approved at the April 4 markup. The amendment was approved by voice vote.

Mr. Pallone offered an amendment, approved by unanimous voice vote, to require the U.S. Army Corps of Engineers and EPA to develop a long-term management plan to dredged materials currently being ocean dumped at a site located six miles off the New Jersey coast. The amendment also authorized a demonstration project for 10 percent of this material to be disposed by means other than ocean dumping.

Mrs. Lowey offered an amendment concerning the National Estuary Program authorized in section 320 of the Clean Water Act. The amendment provides for implementation of management plans developed under the National Estuary Program by ensuring that commitments are established in the plans and by authorizing additional funds. It also directs EPA to establish an office to oversee implementation of the Long Island Sound management plan. The amendment was approved by unanimous voice vote.

Ms. Schneider offered an amendment, based on her bill H.R. 3503, to enhance enforcement and increase civil penalties for violations of title I of the Marine Protection, Research, and Sanctuaries Act of 1972, also known as the Ocean Dumping Act (33 U.S.C. 1401 et seq.). The amendment was approved by voice vote

SECTION-BY-SECTION ANALYSIS

Title I

Title I contains general provisions applicable to the bill as a whole.

SECTION 101—SHORT TITLE

Section 101 contains the short title for the bill. The Act is to be cited as the "Coastal Defense Initiative of 1990."

SECTION 102—FINDINGS AND PURPOSE

Section 102 provides the findings and Statement of purpose for the legislation. It states the Committee's findings concerning the increasing threats posed by growth and development for the long-term health and integrity of coastal waters. Further, it states that all levels of government need to make special efforts to achieve, maintain, and protect coastal water quality through standard setting, planning, monitoring, and enforcement programs that are supported by increased and predictable funding. The purpose of the legislation is to forge a common commitment among all levels of government to protect and preserve coastal and Great Lakes water quality.

SECTION 103—DEFINITIONS

Section 103 contains the general definitions for the bill.

Subsection (1) defines the term "Administrator" to mean the Administrator of the Environmental Protection Agency.

Subsection (2) defines the term "approved coastal zone management program" as those programs approved by the Under Secretary of Commerce for Oceans and Atmosphere of the Department of Commerce pursuant to section 306 of the Coastal Zone Management Act (16 U.S.C. 1456).

Subsection (3) defines the term "certified environmental auditor" to mean an auditor who meets the prevailing industry standards for environmental auditors and who is listed by EPA or a State with an approved auditing program. The function of the term is to define those individuals who may conduct audits of discharging facilities as required by section 505 of the Act.

Subsection (4) defines the term "Clean Water Act" to mean the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

Subsection (5) defines the term "Coastal Defense Fund" to mean the Fund established under section 602 of the Act.

Subsection (6) defines the term "coastal discharger" to mean a direct or indirect point source discharger into coastal waters which may be subject to the coastal effluent fee system established under section 604. It includes both direct dischargers except publicly owned treatment works (POTWs), and significant industrial users of public sewer systems that themselves discharge into coastal waters.

The Committee excludes POTWs from the fee system because their inclusion would be counterproductive. The fundamental purpose of the fee system and of title VI is to provide financial assist-

ance to State and local authorities to improve their water quality programs. One principal impediment to further progress by municipal dischargers towards the nation's water quality goals is lack of funding at the local level to finance additional undertakings, such as sewage treatment plant upgrades and remedying problems associated with combined sewer overflows. The Committee believes that applying an effluent fee system to municipal sources would impede progress by draining away scarce (and badly needed) dollars. Nevertheless, there is no doubt that municipal discharges are a major source of pollution into our coastal waters, and that more work remains to be done by these sources. Thus, POTWs are not excluded from the environmental audit requirements of section 505 of the Act.

Subsection (7) defines the term "coastal region" to divide the entire coastal area of the United States into eight regions. The purpose of the definition is to delineate the coastal regions of the United States for purposes of establishing regional monitoring teams under title IV of the bill.

Subsection (8) defines the term "coastal water quality" to include the physical, chemical and biological parameters that relate to the health and integrity of coastal aquatic ecosystems. The purpose of this definition is to ensure that the terms "water quality" and "coastal water quality" are interpreted broadly. The Committee is well aware that traditional implementation of the Clean Water Act has focused on the presence of certain pollutants in the water column. The Committee intends that the terms "coastal water quality" and "water quality" encompass a broader meaning; to include the health and integrity of the water column, the bottom sediments, living organisms and aquatic habitat generally. Thus, programs designed to protect water quality must reflect a similar broad scope.

Subsection (9) defines the term "coastal water quality monitoring" as a program of measurement, analysis and synthesis to identify and quantify coastal water quality. Specific activities encompassed by this term include modeling, preliminary studies, time-series measurements, data analysis, synthesis, and interpretation. The purpose of the definition is to describe the type of program which integrates these activities with the goal of producing management information.

Subsection (10) defines "coastal waters" to include the Great Lakes under U.S. jurisdiction; those portions of rivers, streams and other bodies of water having unimpaired connection with the open sea up to the historic head of tidal influence; and the waters of the territorial sea of the United States. The Coastal Defense Initiative is a coastal bill, and this definition describes the basic reach of the bill. The definition is derived from section 304(1) of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453(1)).

Subsection (11) defines the term "coastal zone" by using the definition of the same term in section 304(1) of the Coastal Zone Management Act of 1972. That definition states that the term "coastal zone" means—

> the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters

therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal States, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

Subsection (12) defines the term "discharge of pollutants" the same way the term is defined in section 502 of the Clean Water Act. That definition states that the term "discharge of pollutants" means—

(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

Subsection (13) defines the term "environmental audit" to mean a systematic, documented, periodic and objective review of facility operations and practices which is undertaken by an internal or independent certified auditor. The term describes the type of audit that is required by section 505 of the bill. The definition is derived from EPA's guidance on environmental auditing. The Committee intentionally included the reference to "internal" or "independent" auditor to make clear the opportunity for managers of facilities to develop an internal program for auditing compliance, as opposed to reliance on outside auditors who might be brought in periodically to perform an auditing function. The Committee believes that a properly structured internal ausiting capability may prove as effective a tool in promoting compliance as the use of outside audits, and therefore wishes to emphasize that the auditing requirements of title V may be satisfied by the use of internal expertise.

Subsection (14) defines the term "major discharger" to mean any industrial facility that discharges pollutants into coastal waters and is determined by the Administrator of EPA to be a major discharger based upon five enumerated factors. The definition is drawn from EPA's guidance developed for the permit classification system under the National Pollutant Discharge Elimination System (NPDES) contained in section 402 of the Clean Water Act.

Subsection (15) defines the term "minor discharger" to mean any discharger that is not classified as a major discharger.

Subsection (16) defines the term "significant industrial user" as any industrial user that is subject to the categorical pretreatment standards promulgated by EPA pursuant to section 307(b) of the Clean Water Act or any noncategorical source that has a reasonable potential for adversely interfering with the operation of a publicly owned treatment works. The term is derived from EPA regu-

lations pertaining to the pretreatment program. These regulations, in 40 CFR Part 403, define the term as all dischargers subject to the categorical pretreatment standards and all noncategorical dischargers that (i) in the opinion of the POTW have a reasonable potential to adversely affect the POTW's operation, (ii) that contribute a wastestream which makes up over 5 percent or more of the average dry weather capacity of the POTW, or (iii) that discharges an average of over 25,000 gallons per day of processed waters to the POTW.

Subsection (17) defines the term "significant noncompliance" to mean any severe or chronic violations of effluent limitations or discharge requirements established under the Clean Water Act, or requirements established in a management plan approved under sections 319 or 320 of that Act. The purpose of the definition is to describe those dischargers who should be subject to the environmental auditing program and the restrictions on Federal procurement in title V. The Committee has sought through the definition to establish a class of dischargers that have, through their past performance, demonstrated a record of sufficient noncompliance to merit the additional requirements in title V. The term is derived from EPA's definition of "significant violation" in its regulations for the pretreatment program—where it serves a similar function of identifying the high priority violations for Agency enforcement actions.

Subsection (18) defines the term "State permitting authority" to mean the State official to whom EPA has delegated responsibility for administering the NPDES permitting program under section 402 of the Clean Water Act.

Subsection (19) defines the term "Task Force" to mean the National Coastal Water Quality Monitoring Task Force established under section 402 of this Act.

Subsection (20) defines the term "Under Secretary" to mean the Under Secretary for Oceans and Atmosphere of the Department of Commerce.

Subsection (21) defines the term "water quality criteria" to refer to those elements of water quality standards expressed as concentrations of individual pollutants or as narrative Statements of water quality. The defintion also refers to other indices of aquatic ecosystem integrity that are designed to protect designated uses of water to ensure that the "nontraditional" criteria that are currently being developed by EPA, such as wetlands criteria, sediment criteria or biological criteria, are included in the term.

Subsection (22) defines the term "water quality standard" as a standard adopted by a State and approved by EPA, or promulgated by EPA, under section 303 of the Clean Water Act, which (1) designates a use or uses for waters to which it applies, (2) specifies the water quality criteria to protect those uses, and (3) establishes policies which ensure that waters for which the standard is attained will not be degraded.

Title II

SECTION 201—PURPOSE

Section 201 describes the purpose of title II as strengthening the ability of State and Federal water quality programs to protect and restore the coastal waters of the United States.

SECTION 202—COASTAL WATER QUALITY CRITERIA AND STANDARDS

Section 202 modifies the requirements of the Clean Water Act (CWA) pertaining to the issuance and promulgation of water quality criteria and standards by EPA and the States, respectively.

Subsection (a) pertains to the issuance of criteria. It adds a new paragraph (9) to section 303(a) of the Clean Water Act that directs EPA to submit to the Congress a five year work plan for issuing, on an accelerated schedule, criteria for pollutants which pose the greatest risk to coastal waters. The plan must provide for the issuance of criteria within two years for a list of 21 pollutants that are enumerated in subparagraph (A). The listing is intended to accelerate the process for issuing new criteria by avoiding the potentially protracted effort of identifying key pollutants.

New paragraph (9) directs EPA to consult with NOAA and the F&WS when developing these criteria. Further, subparagraph (9)(B) also directs EPA to issue biological and sediment criteria for assessing coastal water quality, as part of the full process required by new section 303(a)(9).

Subsection (b) provides a new, accelerated process for implementing the criteria required by new section 303(a)(9). It directs States to promulgate water quality standards for those criteria no later than two years after their issuance. If individual States fail to do so, then Federal criteria will take effect as enforceable standards, pending the adoption of applicable State standards.

The Committee adopts this approach to guarantee that an adequate array of standards for coastal waters will take effect soon. No such guarantee is now available under title III of the CWA. Nor is the Committee convinced that the accelerated approach will unduly offend State prerogatives in this area. States retain full discretion to promulgate their own State standards; the authorities in section 202(b) come into play only in the absence of State action.

Subsection (c) proposes a series of additional amendments to title III of the Clean Water Act. First, subsection (c)(1) amends section 304(a) to require that EPA consult with the F&WS and NOAA prior to issuing water quality criteria under section 304 of the CWA. The purpose of the provision is to ensure that the criteria provide adequate levels of protection for the fish and wildlife resources that depend on healthy aquatic ecosystems by taking advantage of the the technical expertise of these agencies.

Subsection (c)(2) amends section 304(a)(8) of the CWA, which directs EPA to issue water quality criteria for toxic pollutants based on approaches such as biological monitoring. The amendment changes the directive from a one-time obligation to a continuing obligation. The amendment also expands the applicability of the section to other pollutants that may pose risks to coastal and Great Lakes water quality. The amendment reflects the provision in new

section 303(a)(9)(B) of the CWA that directs EPA to issue biological and sediment criteria for marine and Great Lakes areas.

Subsection (c)(3) amends section 401(a) of the CWA, pertaining to the water quality certification process to require consultation with State and Federal agencies having expertise in fish and wildlife and coastal zone management matters. Section 401 authorizes States to review proposed Federal undertakings to determine if they will cause a violation of State water quality standards. If not, the State is directed to so certify. The section also provides that no Federal undertaking—broadly defined—can proceed in the absence of a timely certification.

Section 401(a) is an important but underutilized tool available to States to protect water quality. The amendment requires States to consult with the appropriate Federal and State fish and wildlife agencies prior to issuing any certification to ensure that the water quality impacts of any action are fully understood. Particularly where State water quality standards will eventually encompass biological, habitat, and sediment standards for coastal and Great Lakes areas, the expertise of State and Federal fish and wildlife agencies will prove invaluable to the section 401 process.

SECTON 203—RESTORING AND PROTECTING COASTAL WATER QUALITY

Section 203 modifies existing program planning, reporting, and compliance provisions of the CWA and makes conforming changes to carry out coastal water quality protection efforts.

Section 203(a) proposes to add a new subsection (n) to section 304 of the CWA, entitled Comprehensive Coastal Water Quality Programs. New subsection (n)(1) directs each coastal State to develop an enforceable coastal water quality protection program for coastal waters within the State that will achieve and protect the water quality and designated uses of those waters. The program is to incorporate and build upon efforts already underway within the State under the section 304(1) toxics control strategies program, the section 319 nonpoint source management program, and the National Estuary Program in section 320 of the CWA. The program also shall incorporate and augment the basic water quality planning and management requirements of section 303(d) of the CWA. By "incorporate," the Committee intends that the coastal waters elements of these statewide programs become an integral part of the States' new coastal water quality protection program.

Paragraph (2) of the new subsection (n) describes the contents of the new program. It shall first identify from time to time, but at least once every three years, two sets of coastal waters: those waters for which applicable water quality standards or designated uses are not being achieved or maintained; and those waters that, although currently meeting their standards and designated uses, are nonetheless threatened by reasonably foreseeable increases in pollution from new or expanding sources.

Subparagraphs (2)(B) and (C) require a two-tiered remedial approach applicable to the waters identified above. Subparagraph (2)(B) provides the basic response for the first tier by requiring implementation of an array of basic enforceable pollution control measures that will be necessary to restore, protect and maintain

water quality standards for those areas identified in subsection (2)(A).

The provision requires that the identification of the necessary measures be based upon the best available scientific information. The "best scientific information available" standard is intended to require EPA and the States to use the most current information in making judgments about what measures may be necessary to restore or protect water quality. It is not intended to require the development of complex, source-specific and pollutant-specific hydrologic models that can pinpoint sources, fates and effects before control measures can be developed and implemented.

Paragraph (2)(B) also references several types of management measures that may be used, including additional water quality-based effluent limits, best management practices, and other approaches to controlling surface runoff from nonpoint sources. The Committee intentionally avoided prescribing the individual remedies or mix of remedies that ought to be imposed in any given area to retain maximum freedom for State officials to select the most manageable, most effective approach to the particular problem presented.

Subparagraph (2)(C), representing the second tier, requires a more elaborate approach to water quality planning for those high priority impaired waters which present more intractable problems. The provision requires coastal States to target high priority waters and expend the resources, time and effort to develop detailed load and waste loan allocations for those waters, in accordance with the general approach now authorized by section 303(d) of the CWA.

Subparagraph (2)(D) requires that the program provide for an enforceable system for allocating and exchanging discharge credits and pollution offsets among point sources and between point and nonpoint sources of pollution into coastal waters.

Paragraph (3) provides the terms of approval for the new program. It requires each coastal State to submit to the Administrator of EPA and the Under Secretary of Commerce its proposed program for approval. If NOAA and EPA determine that the requirements of the subsection are not met, they shall inform the State and provide it with a reasonable opportunity to modify the program.

The paragraph calls for joint preparation of the required program by the State water quality and coastal zone authorities, in keeping with the general objective of the legislation to enlist the capabilities of State coastal zone programs in the effort to combat coastal pollution. In those few coastal States that are not participating in the Federal coastal zone management program, the joint requirement will not apply. The paragraph also requires joint program approval by NOAA and EPA.

Subparagraph (3)(B) provides that all applications for grants and other assistance under this legislation, and sections 319 and 320 of the Clean Water Act, detail the manner in which the State authorities will implement the requirements of its Coastal Water Quality Program.

Subparagraph (3)(C) requires EPA or NOAA to cut off funding under sections 319 or 320 of the Clean Water Act or section 306B of the Coastal Zone Management Act, as amended by CDI, with re-

spect to coastal waters if a State fails to submit within 3 years an approvable program under this subsection. The prohibition ends when the program is approved.

Paragraph (4) defines three terms that will apply to the new subsection. These definitions are identical to those provided in title 102 of this Act, but must be incorporated into the new subsection 304(n), which is cast as an amendment to the Clean Water Act. For a further discussion of these terms, consult the section-by-section analysis for title I, above.

Section 203(b) provides several technical amendments to section 303(d) of the Clean Water Act. The first clarifies that the basic water quality planning requirements in section 303(d)(1) apply not only to those waters which are not achieving their water quality standards because of point source discharges, but also to those coastal waters that are not achieving their standards or designated uses because of nonpoint sources of pollution.

The second amendment ensures that the general requirements of section 303(d) for developing and implementing remedial plans for impaired waters occurs at least on a triennial basis, and are not merely open-ended obligations which States can undertake or ignore at will.

Section 203(c)(1) amends section 305(b)(1) to require coastal States to report on their work to implement biological criteria for their coastal waters and the Coastal Water Quality Protection Plan required by section 304(n) of the Act. The Committee intends this reporting requirement to serve as a biennial report card on progress in implementing these requirements, and in so doing to stimulate greater compliance.

Section 203(c)(2) modifies section 106 of the CWA, which authorizes grant funds to States for managing their general water quality programs. This amendment adds a description of a State's actions to fulfill section 304(n) of the CWA as a new condition for receipt of section 106 grants. These grant funds are an important source of support for overall State water quality programs. The Committee intends that when EPA and coastal States negotiate agreements governing distribution of section 106 grants, the Agency should be aware of and consider the State's efforts to develop, submit, and implement a Coastal Water Quality Protection Program.

Section 203(c)(3) amends section 509(b) of the CWA, which governs judicial review of certain EPA actions under that Act. Subsection (c)(3) makes EPA's approval of a State's coastal water quality protection program subject to judicial review. In this manner, the Committee intends that EPA's actions to fulfill properly the requirements of this legislation will be subject to public and judicial review just as a State's action in developing and submitting a program are to be enforceable under subsections (c)(4) and (c)(5).

Section 203(c)(4) adds a new provision to section 309(a) of the CWA. That section confers general enforcement authority on the Administrator to ensure compliance with certain requirements of the Act. The purpose of the new section 309(a)(7) is to bring the provisions of CDI within the ambit of the CWA. Specifically, the amendment requires the Administrator to bring an enforcement action against any coastal State that has: (1) failed to comply with the requirements of section 303(d); or (2) failed to develop, imple-

ment or enforce the requirements of the coastal water quality protection program. Although section 309 authorizes EPA to impose a wide range of civil and criminal penalties, the Committee has elected in this provision to restrict the remedies to those that may be available through a civil action as provided for in subsection 309(b).

Section 203(c)(5) adds a parallel section to the citizens suit provision of the CWA. It adds to the list of items in section 505(a)(1) for which citizens suits are authorized the requirements of section 304(n) of the Act, as provided for in this legislation. It also adds to the definition of "effluent standard or limitation under this Act" the requirements of section 304(n), as provided for in CDI.

Section 203(d) provides the basic rule of construction that, except as specifically provided for, nothing in CDI is to be construed to affect the requirements or schedules developed pursuant to the Clean Water Act. Covered by this provision are judicially approved consent decrees established under CWO sections 309 or 505, since such decrees are likely to include detailed, binding compliance requirements and deadlines. Also covered are control strategies, management programs, or plans which EPA has approved under sections 304(1), 319 or 320 of the CWA.

This provision expresses the Committee's intent that existing compliance duties under other CWA programs shall not be disrupted or delayed by the requirements of the Coastal Defense Initiative. The programs and elements of the Coastal Defense Initiative discussed in this report should be viewed as complementary to ongoing water quality programs in coastal States.

SECTION 204—OUTSTANDING COASTAL RESOURCE WATERS

Section 204 requires coastal States, acting through their coastal zone or water pollution control agencies, to designate as Outstanding Resource Waters (ORW) those coastal waters of particularly significant ecological or aesthetic value.

By designating these waters, States may put into place additional protections for those high quality areas that deserve it. Experience teaches that prevention is a more effective, more efficient approach to protecting ecological quality than remediation. Yet, the traditional emphasis of water quality programs has been on identifying how much pollution is too much and what needs to be done to reduce pollution. The requirement in section 204 is designed to redress that imbalance by instituting a program to protect high quality areas.

The Committee is aware of and recognizes the current efforts underway in several States to institute similar programs in conjunction with existing Federal antidegradation requirements. The Committee incorporates this new statutory requirement to ensure that the ORW classifications are accompanied by more formal, public participation procedures, including a process for receiving and acting on nominations.

Subsection (b) also reflects this emphasis on public participation by requiring State authorities to post all major points of access to those waters. The posting is intended to build public awareness of the special character of a designated area, foster additional volun-

tary efforts to protect it, and, through greater public awareness, promote compliance with pollution control requirements.

Some coastal States may wish to delegate the posting requirements to local authorities since the local officials may be best positioned to implement the requirement. To accommodate this possibility, the Committee has included the reference to local officials in paragraph (1) of subsection (b).

SECTION 205—COASTAL DISCHARGE CRITERIA

Section 205 amends section 403 of the Clean Water Act to strengthen existing protections for estuarine and ocean waters. Under section 403, permits issued under section 402 of the Clean Water Act for discharges into certain waters must contain additional protections for those waters based on guidelines developed by EPA under section 403(c). Several provisions of this section were taken from H.R. 403, introduced by Congressman Jim Saxton, and H.R. 3120, introduced by Congressman Tom Manton.

These guidelines are intended to judge the degradation of coastal waters based on the effect of the discharge on marine life; aesthetic, recreational, and economic values; and other uses of the oceans. The amendment expands the geographic area to which these guidelines are applied to include estuaries nominated by a Governor under the National Estuary Program established under section 320 of the CWA. This assures that those estuarine waters identified by a State as impaired and needing additional controls to improve water quality will benefit from the extra protection afforded by the section 403(c) guidelines. The amendment also grants EPA the discretion to apply the criteria to other navigable waters of the United States.

Subsection (b) also provides that if EPA should object to the issuance of a permit to discharge into certain coastal waters based on noncompliance with the coastal discharge criteria developed under section 403(c) of the CWA, that action is reviewable in court under the Administrative Procedures Act. This change is made in response to EPA's current position that its objections do not constitute reviewable final agency actions.

The amendment also provides two grounds for denying a section 402 permit to a coastal discharger. The first is if the applicant has failed to demonstrate a need for the discharge and a lack of reasonable alternatives to it. These considerations are currently part of the section 403(c) guidelines and are codified here to stress that direct discharges into coastal waters should be avoided or reduced if there are feasible alternatives, such as recycling the wastes discharged, or a suitable land-based disposal site.

The second ground is if there is insufficient information to make a determination of the environmental effect of the discharge. This provision modifies the existing statutory standard for permit denial, broadening the emphasis from compliance with the section 403(c) guidelines to a larger question of environmental harm. The Committee has made this change based on its concerns that the total impact of a proposed discharge on the marine environment should be known before permits are issued under section 402. The Committee has also directed EPA, when issuing permits for coastal

discharges, to take into account the goals of the Clean Water Act, especially that water quality should provide, wherever attainable, "for the protection and propagation of fish, shellfish, and wildlife, and provide for recreation in and on the water."

Finally, subsection (d) directs EPA to reissue the section 403(c) guidelines within 18 months after enactment of the Coastal Defense Initiative to reflect changes made by the amendment and to prevent degradation of coastal water quality. The last consideration evinces the Committee's concerns that the existing guidelines may not adequately protect the coastal environment, and that more stringent standards may be needed.

SECTION 206—MARINE SANITATION DEVICES

Section 206 amends section 312 of the Clean Water Act, which pertains to vessel discharges and shoreside pumpout facilities. Section 312 requires all vessels to be equipped with marine sanitation devices (MSDs) in accordance with regulations detailing different types of MSDs for different classes of vessels. The section also authorizes the U.S. Coast Guard to enforce these requirements.

The purpose of section 206 is to clarify that local officials may be delegated enforcement authority over these discharge requirements. The proposal reflects the Committee's belief that local officials may be best suited to enforce the requirements and are likely to be most interested in doing so. The section therefore authorizes the U.S. Coast Guard to delegate enforcement powers to local officials through memoranda of understanding with State officials.

Proposed new paragraph (2)(C) of section 312(k) provides that the States of municipalities that assume enforcement responsibilities are to retain the fines and penalties they levy in carrying out those responsibilities. The Committee intends that these funds be used by the State or municipality to help remedy continuing problems associated with vessel discharges in the area, such as inadequate monitoring of discharges and the lack of available shoreside pumpout facilities.

Section 206(b) requires the F&WS, in conjunction with EPA, to provide notice to State fish and game and water pollution control authorities of the availability of funds under section 8 of the Sport Fish Restoration Act (16 U.S.C. 777g) to finance the establishment and improvement of shoreside pumpout facilities for MSDs, if the pumpout station will be part of an approved Federal aid project. This notification shall include: (1) a description of the availability of funds; (2) a projection of State apportionments for the next five years; (3) guidance on appropriate types of pumpout facilities; (4) guidance on areas likely to be affected by vessel sewage; and (5) other information likely to promote establishment of shoreside pumpout facilities.

Section 8 of the Sport Fish Restoration Act requires a State to allocate 10 percent of the funds apportioned to it under the Act to pay the "costs of the acquisition, development, renovation, or improvement of facilities (and auxiliary facilities necessary to insure the safe use of such facilities) that create, or add to, public access to the waters of the United States to improve the suitability of such waters for recreational boating purposes."

Subsection 206(b) was included in the Coastal Defense Initiative because the Committee believes that shoreside pumpout stations are legitimate auxiliary facilities which should be funded in conjunction with an approved Federal aid project. Additionally, the Committee notes that the major impediment to reducing the discharge of sewage from vessels is too few shoreside pumpout facilities, because of a lack of construction funds. Therefore, funds available for public access would provide a significant (approximately $18 million was available in FY 1990) and predictable source of funds for pumpout facility construction.

Finally, subsection (c) directs EPA and the Coast Guard to prepare a study on the problem of shoreside pumpout facilities and offer recommendations on how to alleviate the problem.

SECTION 207—POLLUTION CONTROL MEASURES

Section 207(a) directs EPA, in conjunction with other Federal agencies, to develop (1) a range of pollution control measures applicable to nonpoint sources of pollution into coastal waters; (2) techniques for evaluating the effectiveness of these measures; and (3) technical guidance to enable State and local authorities to implement these measures and estimate how effetive they will be in reducing pollution from nonpoint sources.

Subsection (b) provides further details of the pollution control measures covered by EPA's activities under subsection (a), including methods or practices that constitute each control measure, a description of categories of activities for which each may be suitable, pollutants or water quality impacts that may be affected by the pollution or water quality impacts that may be affected by the pollution control measure, reliable methods to quantify estimates of pollution reduction effects, and necessary monitoring requirements to assess success over time.

If State or local authorities choose to use these pollution control measures or practices developed under this section, then subsection (c) provides them with a rebuttable presumption in all judicial and administrative proceedings that the pollution measures will do what the technical guidance anticipates they will do. The function of this presumption is to ensure that effective water quality planning and management, as envisioned by section 203, does not become stalled by the inability of State and local authorities to demonstrate empirically the specific effects of any individual pollution source.

SECTION 208—NATIONAL ESTUARY PROGRAM

Section 320 of the Clean Water Act provides for the establishment of management conferences that will develop comprehensive conservation and management plans (CCMPs) for estuaries of national significance. As enacted in 1987, section 320 did not address the actions to follow development of a CCMP. Section 208 of CDI modifies section 320 to provide for implementation of a CCMP.

Subsection (a) amends section 320(b)(4) by directing that a management conference develop a CCMP within five years of the date on which the management conference was convened. The Committee intends the date on which a management conference is con-

vened to mean the date that EPA and the affected Governor or Governors sign a conference agreement.

Subsection (b) amends section 320(e) of the CWA by increasing from 5 to 10 years the minimum period that a management conference is convened. The intent of this subsection is to establish a minimum 5-year period to begin implementation of a CCMP. The period of time available to implement a CCMP may be increased in two ways. First, a management conference may develop its CCMP in less than the 5 years mandated in section 320(b)(4). For example, if a management conference developed its CCMP in 4 years, it would have 6 years to begin implementation.

Second, the Administrator may extend a management conference for an additional 5 years if the affected Governor or Governors concur. A management conference may be extended for several reasons: (1) to coordinate CCMP implementatin activities undertaken by Federal, State, and local agencies; (2) to monitor the effectiveness of actions taken to implement the CCMP; and (3) to review Federal financial assistance programs to ensure that they are consistent with the CCMP.

Subsection (c) contains amendments to section 320(f) which detail criteria for CCMP approval and implementation. The amendment requires EPA to approve a CCMP, after providing for public review and comment, within 120 days after its completion, if: (1) the CCMP meets the requirements of section 320; (2) the CCMP specifies implementation of responsibilities, including the funding responsibilities and implementation schedules, of the Federal, State, and local governments which participated in development of the CCMP; and (3) the affected Governor or Governors agree.

The Committee recognizes that Federal, State, and local government agencies may be unwilling to commit to specific funding and implementation schedules because of their inability to predict future appropriations. Therefore, the Committee anticipates that a CCMP may outline which agencies will be responsible for funding specific portions of the CCMP, rather than commitments to specific dollars amounts. With regard to implementation schedules, the Committee anticipates that a CCMP will contain a prioritized listing of actions to be undertaken and the agency responsible for completion of the action.

Paragraph (2) makes EPA responsible for ensuring that Federal responsibilities and commitments under an approved CCMP are complied with. This paragraph also details the CCMP implementation actions that EPA must undertake in conjunction with the management conference. These actions include:

Overseeing and providing assistance to the management conference for implementing the CCMP.

Coordinating the Federal and State programs necessary for implementing the CCMP.

Making recommendations to the management conference on enforcement and technical assistance necessary to ensure compliance with and implementation of the CCMP.

Collecting and making available to the public publications and other forms of information relating to implementation of the CCMP.

Making CCMP implementation grants under CWA Section 320(g).

Providing administrative and technical support to the management conference.

Paragraph (3) allows EPA to establish a local office to carry out its responsibilities under section 320(f) if the affected management conference recommends establishment of such an office. It is the Committee's intent that offices created under this section shall be established under the authority of the appropriate EPA Regional Administrator. In the event that an estuary falls within two EPA regions, the management conference and the EPA Administrator shall mutually agree on the EPA Region which shall have authority over the office. The Administrator shall determine the actual location of an office with the concurrence of the management conference. Administrative and personnel costs of an office established under this section shall be reimbursed from funds appropriated under CWA section 320(i)(1)(A).

Paragraph (4) allows EPA to assist State implementation of CCMPs with funds appropriated under the authority of title VI (State Water Pollution Control Revolving Funds), section 319 (Nonpoint Source Management Program), and section 320(i)(2) (CCMP implementation grants) of the CWA.

Subsection (d) permits EPA to make grants to State, interstate, and regional water pollution control agencies, State coastal zone management agencies, interstate agencies, and other public or nonprofit agencies, institutions, organizations, and individuals. Grants may be made for the development of CCMPs, including research, surveys, studies, and modeling; or for implementation of CCMPs, including any additional research, planning, enforcement, and citizen involvement activities necessary to improve implementation. The Committee anticipates that, in awarding grants, EPA will consult closely with the appropriate management conference.

The Federal share of a grant awarded under this section shall not exceed 75 percent of the cost of the research, survey, plan, study, model, or other activity. The non-Federal share of a grant shall be derived from non-Federal sources. The Committee believes that active citizen involvement is essential for the successful implementation of a CCMP; therefore, in an effort to encourage citizen involvement, the Federal share of citizen involvement grants shall not exceed 95 percent.

Subsection (e) amends section 320(i) to authorize appropriations to carry out the requirements of section 320. An amount not to exceed $20 million is authorized to be appropriated for fiscal years 1991 through 1995 for administration of management conferences and for making CCMP development grants under section 320(g)(2)(A).

The Committee intends that funds appropriated under paragraph (1) shall be available for management conference administration during CCMP development and implementation. Funds appropriated under this paragraph shall also be available for the administrative expenses of any local offices established under section 320(f)(3). However, not more than 10 percent of the amounts appropriated under this paragraph may be used for administration of management conferences or local offices. Finally, funds appropri-

ated under the authority of this paragraph are available for making CCMP development grants authorized under section 320(g)(2)(A).

An amount not to exceed $20 million is authorized under paragraph (2) to be appropriated for fiscal years 1991 through 1995 for making CCMP implementation grants under section 320(g)(2)(B). Funds appropriated under this paragraph shall be available for implementation of approved CCMPs on a pro rata basis.

An EPA Long Island Sound office is established under subsection (f). The office is charged with carrying out the approved Long Island Sound CCMP in accordance with the responsibilities of EPA under section 320(f)(2) of the CWA. The office shall be established under the authority of an EPA Regional Administrator and at a site which is acceptable to the Long Island Sound Management Conference.

Subsection (g) designates Massachusetts Bay, Massachusetts, as an estuary of national significance. EPA is directed to make available to the Massachusetts Bay Management Conference established for this estuary a pro rata share of the funds appropriated for implementing section 320 of the CWA.

SECTION 209—EXISTING PROVISION NOT AFFECTED

Section 209 clarifies that nothing in this Act is intended to affect or supersede section 214(g) of the Caribbean Basin Economic Recovery Act. That section prescribes the manner in which the CWA is to apply to certain discharges, and the Committee intends no direct or indirect change to that section.

SECTION 210—ALTERNATIVES TO MUD DUMP SITE FOR DISPOSAL OF DREDGED MATERIAL

Section 210 authorizes the U.S. Army Corps of Engineers and EPA to develop a long-term management plan for the disposal of dredged material from the New York/New Jersey Harbor region. The region includes the Port of New York and New Jersey. The section supersedes section 211 of the Water Resources Development Act (WRDA) of 1986 (33 U.S.C. 2239), which required EPA to locate an alternative site for disposing of dredged material from the Harbor region. Dredged material is currently dumped at a site located approximately 6 miles east of Sandy Hook New Jersey, called the Mud Dump Site. Section 211 of the WRDA required EPA to designate an alternative site to the Mud Dump Site no less than 20 miles from shore. EPA has nearly completed its study of an alternative site, and it appears unlikely that a suitable site can be found at 20 miles, due to the dispersive character of deeper waters at this distance.

Subsection (a) requires the Administrator of EPA to submit a final report to the Congress within 90 days of enactment on the suitability of designating a dredged material disposal site no less than 20 miles from shore. The Committee anticipates that the report will conclude, as EPA has testified, that no such site is available. The Committee encourages EPA to keep the information derived from its study of deep-water sites for future site designations.

Subsection (b) directs the Secretary of the Army and the Administrator of EPA to submit, within 80 days of enactment, a long-term management plan for dredged material from the New York/New Jersey Harbor region. The information that the Army Corps of Engineers has developed in its recent evaluation of disposal alternatives for the region should be useful background for the development of the joint long-term management plan. The plan should include, among other components, a discussion of the feasibility of changing the boundaries of the existing Mud Dump Site to extend its life; measures to reduce the amount of materials that must be dumped in the ocean; measures to reduce the amount of contaminants in the materials to be disposed; and a monitoring program at the Mud Dump site.

Subsection (c) directs the Secretary of the Army, in consultation with the Administrator of EPA to conduct a demonstration project for disposing of up to 10 percent of the dredged material being dumped in the ocean in an environmentally sound, alternative manner. Some of the alternatives that might be explored include the use of borrow pits, which are man-made or naturally occurring depressions in the bottom of an estuary; construction of a containment island, or confined disposal facilities that have been successfully used at other ports; use of clean materials for landfill cover or habitat restoration; and the use of decontamination technology to clean up contaminated dredged materials.

Subsection (d) provides that only dredged materials that meet the criteria of section 102(a) of the Ocean Dumping Act are allowed to be disposed at the Mud Dump Site. The authority that EPA has to grant the Corps a waiver from these criteria will not be available in this case. The Committee believes there are extenuating circumstances which require that only uncontaminated materials be dumped at the Mud Dump Site. Moreover, a waiver has never been requested or granted under this provision.

Subsection (e) contains a description of the Mud Dump Site, according to its geographic coordinates as designated by EPA in 1984.

Subsection (f) authorizes necessary appropriations to the Corps and EPA to implement this section.

Subsection (g) repeals section 211 of the WRDA which is now obsolete. This does not mean, however, that EPA and the Corps should not continue their search for a suitable alternative site, including the possibility of expanding the current Mud Dump Site. EPA has existing authority under section 102(c) of the Ocean Dumping Act to designate a site.

Title III

SECTION 301—PURPOSES

Section 301 contains a brief statement of Purposes for title III, which are to strengthen administrative and regulatory links between Federal and State coastal zone management and water quality programs and to enhance State and local authorities for managing land use activities which otherwise would degrade coastal waters and coastal habitats.

SECTION 302—COASTAL ZONE MANAGEMENT ACT OF 1972 AMENDMENTS

Section 302 proposes to reaffirm and strengthen the ability of State coastal zone management programs to protect and restore coastal water quality.

Subsection (a) adds a new finding to section 302 of the CZMA that land uses in and adjacent to the coastal zone may affect the quality of coastal waters and habitat. The new finding also reflects the conclusion of the Committee that efforts to control coastal pollution from land use activities must be improved.

Subsection (b) adds a new policy to section 303(2) of the CZMA, clarifying that State coastal zone management programs are to manage coastal development to protect the qualtiy of coastal waters and to prevent the impairment of existing uses of those waters.

The term "existing uses" is intended by the Committee to include not only all current uses but also those uses which have historically been associated with the area but which—because of recent declines in water quality or habitat—may currently be impaired.

Subsection (c) adds a new section 306B to the CZMA.

Section 306B(a) provides the general directive that the management agency chosen by the State to implement and administer a State's approved coastal zone management program shall prepare and submit to the Under Secretary an Aquatic Resources Protection Program. The purpose of the program is to develop and implement on a continuing basis coastal land use management measures for land-based sources of nonpoint source pollution.

Subsection (a)(2) details the manner in which the program shall be coordinated with other related efforts under the Clean Water Act to protect coastal ecosystems, in particular the Comprehensive Coastal Water Quality Program under new section 304(n), as proposed by section 203 of the Coastal Defense Initiative. It calls for close coordination of the coastal zone program with State and local water quality authorities and programs developed under sections 208, 303, 319, and 320 of the CWA.

Section 306B(b) describes the new program contents, consisting of seven separate but related elements: identifying land uses, identifying critical areas, implementing coastal land use management measures, providing technical assistance, ensuring public participation, providing administrative coordination, and modifying State coastal zone boundaries, if necessary.

First, the program must identify land uses which individually or cumulatively may cause or contribute significantly to the degradation of one of three types of coastal waters: those that are not achieving their water quality standards or designated uses; those that may be achieving water quality standards but are nonetheless threatened by foreseeable increases in pollution through growth and development trends in the area; and outstanding resource waters, as designated by State coastal agencies or State water pollution control authorities. These provisions mirror requirements included in section 203(a) of the Coastal Defense Initiative.

By referencing in subsection (b)(1)(A) both water quality standards and designated uses, the Committee recognizes the separate

but complementary role of each. The fundamental objective of the water quality standards program is to protect the designated uses of surface waters. The program relies heavily on the use of water quality standards as the principal means to judge if those uses are protected. There may be instances, however, where compliance with the standards does not mean that the uses are in fact protected, or instances where standards are being achieved but the fish are nevertheless contaminated because they absorb contaminants from the sediments. In these instances, the obligation to protect designated uses comes into play, notwithstanding compliance with the water quality standards themselves.

Subsection (b)(1) is intended to encompass several types of land uses. First, it refers to those individual undertakings which will have an effect on coastal water quality and habitat, such as large housing or commercial development in coastal areas. Second, it refers to those land uses which individually may not significantly affect coastal waters but which, taken together with other similar activities, would do so. Typical among these types of land uses might be the installation of septic systems or the construction of homes and other structures.

Subsection (b)(2) also requires the program to provide for the identification of critical areas in or adjacent to the coastal zone within which any new undertaking or the expansion of existing land uses will be subject to land-use management measures that are designed to reduce water pollution. The two types of identifications in these paragraphs—of land use activities and critical coastal areas—are intended by the Committee to serve complementary purposes. This second approach stems from the problems associated with proving water quality impacts, discussed above, by creating the presumption that in certain critical coastal areas all land use activities will affect water quality. The intent of the Committee in adopting this second tier is to ensure that for sensitive ecological areas in the coastal zone, State and local coastal managers spend their time and effort designing and implementing appropriate protective or remedial measures.

Subsection (b)(3) describes the broad range of land use measures that the program may contain and that States may apply to the land uses or critical areas identified in the program.

Subsection (b)(4) directs the State coastal zone management program to provide technical assistance to local authorities on how to implement measures to protect coastal waters that are required by paragraph (3). Since the principal mechanism for implementation may in many instances be local authorities, the success of the overall program is very much tied to the effectiveness of the technical assistance provided to those authorities.

Subsection (b)(5) requires the program to provide at all key points ample opportunities for public participation. The success of the efforts to identify land uses and critical areas, designate outstanding resource waters, and select and implement measures that will be required to protect coastal water quality will all depend on the degree of public support for the undertakings. That support can best be assured by a meaningful public participation program.

Subsection (b)(6) requires State coastal programs to establish a range of administrative mechanisms to promote close coordination

among the several State authorities that ought to be involved in the broad effort to protect coastal water quality and habitat. These mechanisms are intended by the Committee to provide the formal conduits through which the necessary cooperation will be achieved.

Subsection (b)(7) directs State coastal management agencies to modify the inland boundaries of the States' coastal zone as may be necessary and appropriate—in the judgment of those agencies—to manage the land uses and areas identified in paragraphs (1) and (2). The Committee is well aware of the sensitivity associated with boundary questions, but believes that the need to tackle these boundary issues outweighs the uneasiness the exercise apparently entails for some State programs.

Subsection (c) pertains to program approval and establishes the financial penalties for State programs for failing to develop an acceptable program. The subsection requires the Under Secretary to withdraw an increasing amount of base program funding under section 306 if a State does not submit an approvable program under this section. The subsection requires NOAA to withdraw 10 percent after the third year, 15 percent after the fourth year, 20 percent after the fifth year, and 30 percent after the sixth year and thereafter if an approvable program has not been submitted.

Subsection (c)(2)(B) authorizes NOAA to grant a State an additional three years—beyond the original three-year requirement in subsection (a)—to develop an approvable program if NOAA finds that the State is making a genuine effort to develop such a program and it needs more time.

Subsection (d) directs NOAA to provide technical assistance to the States and local governments to implement the program. The assistance must cover techniques for assessing water quality impacts of coastal land uses, for assessing the cumulative effects of land uses on water quality, for developing and revising model ordinances to protect water quality, and for predicting the positive water quality effects of the land use management measures. The Committee recognizes that this directive is very ambitious and that NOAA may not now have the technical capability to fulfill it. The Committee therefore expects NOAA to utilize and draw upon the capabilities of other agencies—EPA, the Soil Conservation Service, and the F&WS.

Subsection (e) provides for Federal grants to States from the Coastal Defense Fund established in title VI for developing and implementing the Aquatic Resources Protection Program required by this section. The subsection requires, however, that States provide an amount equal to one-quarter of the Federal grant as a matching contribution.

SECTION 303—BOUNDARIES OF COASTAL ZONES

Section 303 requires the Under Secretary to review the inland boundaries of States' coastal zones within 18 months of enactment. Under subsection (a), the Under Secretary is directed to assess if the boundary extends inland far enough to enable the coastal State's potential Aquatic Resources Protection Program to control land and water uses that have significant impacts on coastal water quality. If the review indicates that a boundary ought to be modi-

fied, then subsection (b) directs the Under Secretary to make recommendations to the State on those modifications. The responsibility for acting on those modifications lies with each State coastal management authority and is described in new section 306B(b)(7) of the CZMA, as proposed by this title.

The Committee intends by this requirement to stimulate a review of one of the basic building blocks of State coastal programs—the geographic scope of those programs—in light of the pressing need to strengthen the roles of these programs in protecting water quality.

SECTION 304—COORDINATION WITH NATIONAL ESTUARY PROGRAM

Section 304 directs each coastal State to nominate a representative of the State's coastal zone agency for appointment to any management conference convened under section 320 of the Clean Water Act for estuaries lying wholly or partially within the State. The purpose of this requirement is to ensure close administrative ties between a State's coastal zone program and any comprehensive conservation and management plan developed under the National Estuary Program for areas within that State.

Title IV

SECTION 401—PURPOSE

The purpose of this title is to establish long-term water quality monitoring programs for high priority coastal waters designed to enhance the ability of Federal, State, and local authorities to develop and implement effective remedial programs for those waters.

SECTION 402—NATIONAL COASTAL WATER QUALITY MONITORING TASK FORCE

Subsection (a) establishes a National Coastal Water Quality Monitoring Task Force. The composition of the Task Force is set forth in subsection (b) and includes representatives of the EPA, the NOAA, the FWS, and the U.S. Army Corps of Engineers. The EPA representative shall serve as chairperson of the Task Force. In addition to these Federal representatives, the chairperson of the Task Force shall appoint four representatives to the Task Force from coastal States (one each from the Atlantic, Gulf of Mexico, Pacific, and Great Lakes coasts), and four representatives of the marine scientific community.

All persons appointed to the Task Force shall have expertise in coastal water quality monitoring and coastal regulatory affairs. The Committee intends that members of the Task Force have experience in geographically targeted water quality monitoring programs such as those conducted as part of the Chesapeake Bay Program, Great Lakes Program, or National Estuary Program. Subsection (c) states that members of the Task Force who are not employees of Federal or State government may receive travel or transportation expenses in accordance with 5 U.S.C. 5703.

SECTION 403—NATIONAL COASTAL WATER QUALITY MONITORING STRATEGY

Subsection (a) directs the Task Force to develop and implement a national strategy for conducting coastal water quality monitoring programs. First, it shall identify all Federal water quality monitoring programs and incorporate those programs into the national strategy to the maximum extent possible.

The Committee intends this requirement to encompass water quality monitoring programs which are mandated by statute (e.g., sections 305(b), 301, and 403(c) of the CWA; titles I and II of the Marine Protection, Research and Sanctuaries Act; and the Outer Contiental Shelf Lands Act) as well as programs which have been administratively created (e.g., NOAA's National Status and Trends Program and EPA's Environmental Monitoring and Assessment Program. However, priority should be given to monitoring programs conducted in conjunction with the EPA's National Estuary Program because of its emphasis on waterbody-specific monitoring which is directly related tgo remedial activites.

Second, within one year of the date of enactment of this Act, the Task Force shall develop a memorandum of understanding among the Federal agencies that conduct water qualtiy monitoring programs to outline Federal responsibilities for monitoring conducted under this title. Finally, the Task Force is charged with ensuring that Federal water quality monitoring activities are coordinated to the maximum extent possible with the coastal water quality monitoring programs developed under this title.

In addition to its responsibilities for identifying and coordinating Federal monitoring programs, the Task Force has several other responsibilities. First, it is charged with developing national monitoring guidelines pursuant to section 404. Second, it is required to select high priority coastal waters from among those water bodies recommended by Regional Monitoring Teams under section 405(b). Third, it is to review and approve or disapprove individual water quality monitoring programs submitted by regional monitoring teams. Finally, pursuant to section 408, the Task Force is to develop a national reference center which contains a data base of information on coastal water quality monitoring efforts.

Subsection (b) requires EPA, acting on behalf of the Task Force, to issue a report to Congress within two years of enactment summarizing efforts undertaken to fulfill the requirements of this title and the status of monitoring programs developed under section 403. EPA shall issue subsequent progress reports triennially.

SECTION 404—MONITORING GUIDELINES

Subsection (a) requires the Task Force within 18 months of enactment to issue guidelines designed to assist Coastal Water Quality Regional Monitoring Teams to develop and implement coastal water quality monitoring programs. Guidelines developed under this section are required to address three general goals. First, the criteria should provide uniformity among coastal water quality monitoring programs, yet still allow flexibility to respond to local conditions. Second, the criteria should include guidance on establishing monitoring programs to identify and quantify the severity

of existing or anticipated problems in coastal water quality, as well as sources of pollution. Finally, the criteria shall provide guidance on methods to evaulate the effectiveness of efforts to reduce or eliminate sources of pollution.

Subsection (b) directs the Task Force to issue technical protocols for: (1) designing statistically valid monitoring networks and surveys; (2) determining appropriate sampling and analysis techniques, as well as appropriate physical, chemical, and living resource parameters; and (3) intercalibration of analytical equipment, assessing the quality of monitoring data, controlling the quality of monitoring data, and data management. The Committee anticipates that the Task Force will develop a diverse suite of protocols under this subsection which will allow Coastal Water Quality Regional Monitoring Teams to tailor coastal monitoring programs to meet the monitoring requirements of a particular coastal waterbody. In developing protocols under this section, the Task Force shall utilize the best information available; however, it is not required to conduct or contract for research on new monitoring or management techniques.

The Task Force is required to review periodically and report on the guidelines issued under this section. The review shall evaluate the effectiveness of the guidelines, the degree of uniformity they provide while taking into account local conditions, and the need to modify or supplement them with new guidelines. Additionally, the Task Force should evaluate the technical protocols based on technological advances and incorporate new technology as appropriate.

SECTION 405—COASTAL WATER QUALITY MONITORING PROGRAMS

Section 405(a) directs the Task Force to establish Coastal Water Quality Regional Monitoring Teams (Regional Teams) within 6 months of enactment of this Act for each of the eight coastal regions defined in section 103(7) of the Coastal Defense Initiative.

Each Regional Team shall be composed of: (1) four representatives of the scientific community; (2) two representatives of private institutions; (3) a representative of each participating State; (4) representatives of local governments; (5) representatives of the public; and (6) representatives of EPA and NOAA. Representatives of other Federal agencies may serve on a Regional Team if the Task Force considers it appropriate. Representatives of National Estuary Program management conferences should be included on Regional Teams where a management conference has been convened in the region.

The composition of the Regional Teams emphasizes State and local individuals, because the Committee believes that these individuals will be better able to develop monitoring programs that address State and local pollution problems. As a general rule, members of Regional Teams shall have recognized technical expertise in coastal water quality monitoring programs. Priority should be given to individuals who have experience in waterbody monitoring programs, rather than point source monitoring. Each Regional Team shall select one of its members as chairperson.

Under subsection (b), each Regional Team shall recommend coastal waters within its region that should be designated as high

priority coastal waters for which individual monitoring plans should be developed. Priority should be given to waters identified as not meeting, or likely not to meet, water quality standards or designated uses under new section 304(n)(2) of the CWA, as proposed by title II of this Act. Priority also should be given to waterbodies identified as estuaries of national significance under section 320 of the CWA.

Regional Teams shall submit their recommendations to the Task Force for its review and approval. Once an area is designated as "high priority coastal waters" by the Task Force, the Regional Team shall develop a coastal water quality monitoring program for it in accordance with the requirements of subsection (c). The Regional Team shall provide for public participation in the development and implementation of each monitoring program, as well as technical guidance on implementing the plan.

Each Regional Team, in consultation with the Task Force, shall review the effectiveness of each monitoring program in meeting its objectives and make whatever modifications are necessary to ensure that the objectives are met. The Committee anticipates that, while there is no specific time period for these reviews, they will be conducted at least once every five years. Finally, each Regional Team shall, from time to time, issue a report on the general status of coastal water quality within the region. These may be included in the reports required by section 403(b).

Subsection (c) details the nine criteria which Regional Teams are required to use when developing a coastal water quality monitoring program. The Committee is aware that the majority of existing coastal water quality monitoring programs are designed to determine either compliance with a specific discharge permit or the status and trends of coastal water quality. Neither of these types of monitoring programs meets the primary goals of this title. The primary goals and objectives are to characterize the health of the waterbody, assist in developing a water quality protection program for the waterbody, and assess the effectiveness of the program.

The first criterion for a regional monitoring program is to state goals and objectives of the monitoring program and the relationship to regulatory objectives for the waterbody.

Second, programs are to identify water quality and living resource parameters of the monitoring program. In carrying out this paragraph, a Regional Team shall incorporate, to the maximum extent possible, the guidelines developed by the Task Force under section 404, unless those protocols are inappropriate for the waterbody.

Third, these programs are to describe the types of monitoring networks, surveys, and other activities necessary to achieve the objectives, using the guidelines issues under section 404, where appropriate.

Fourth, monitoring programs shall survey existing Federal, State, and local coastal monitoring activities in or on the waters to which the program applies, and integrate them, as appropriate, into the monitoring program.

Fifth, monitoring programs shall describe the data management and quality control components of the program, using guidelines developed under section 404. Compliance with data management

guidelines is essential for successful implementation of the National Coastal Water Quality Reference Center mandated in section 407.

Sixth, these programs shall specify the implementation requirements, including: (1) the lead State or regional authority which will administer the program; (2) the public and private parties, including all dischargers, who will be subject to the program, and an implementation schedule; (3) all Federal, State, local, and private implementation responsibilities; and (4) any changes to Federal, State, or local programs necessary to implement the program. Industrial or municipal dischargers may be required to augment existing compliance monitoring, under current permit requirements, with additional monitoring to assist in implementing an approved program.

Seventh, they should estimate the costs to the Federal, State, and local participants of implementing the program.

Eighth, they should describe the technical guidance that will be provided to those responsible for implementing the program.

Ninth, monitoring programs should describe the methods which will be used to assess periodically the program's success in meeting its objectives and the manner in which it may be modified over time. Given the complexity of marine and estuarine systems, it is highly likely that monitoring programs will need to be modified several times to accurately measure conditions in a waterbody. Therefore, the Committee strongly believes that periodic review and modification is essential for the development of successful programs.

Subsection (d) provides for the Task Force's approval of recommendations for high priority coastal waters and water quality monitoring programs. Within 18 months of enactment, each Regional Team shall submit its recommendations and may submit additional recommendations after the initial 18-month period.

Four criteria are prescribed to govern approval or disapproval by the Task Force of high priority coastal waters: (1) the availability of funds from the Coastal Defense Fund established under title VI of CDI and other Federal sources; (2) the availability of State funds to meet the 25 percent match requirement for grants under section 603(c)(3)(C) of CDI; (3) the need for a monitoring program for the nominated coastal waters; and (4) any other appropriate factors.

For each area that is approved, the Regional Team shall then submit proposed coastal water quality monitoring programs for approval by the Task Force. The Task Force shall review and approve the proposed program within 60 days, if it meets the requirements of this section, or return it with recommended modifications. The Regional Team shall make the recommended modifications and resubmit the program within 60 days of receiving the returned plan. If a Regional Team does not submit an approvable monitoring program, EPA may, in cooperation with NOAA and in consultation with the affected Governor or Governors, develop a program that meets the requirements of this section.

An approved coastal water quality monitoring program may be implemented with funds available under section 604 of this Act. However, the Task Force shall not approve a monitoring program unless the participating States provide at least 25 percent of the es-

timated cost of implementing the program with funds from non-Federal sources.

SECTION 406—COMPLIANCE AND ENFORCEMENT

Section 406 ensures that all government and private parties covered by a Coastal Water Quality Monitoring Program will implement and abide by it. Subsection (a) articulates this objective by directing that the implementation requirements of each monitoring program shall be binding on all Federal, State, and local government officials, and private parties covered by the program. In this manner, the Committee intends to ensure that these entities will carry out the specific elements which the Committee has detailed in section 405(c), especially the implementation requirements contained in section 405(c)(6).

Subsection (b) directs the Administrator of EPA, the Under Secretary for oceans and atmosphere, and the Governor of each State participating in a Coastal Water Quality Monitoring Program to ensure compliance with it. Thus, each of these Federal and State officials will be accountable for implementation of their elements of the monitoring program. Subsection (b) provides that the requirements of a Coastal Water Quality Monitoring Program are deemed to be requirements of title I of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA) for purposes of section 105 of that Act (33 U.S.C. 1415). This means that the enforcement and compliance authorities available under section 105 of the MPRSA shall be available to enforce the requirements of an approved monitoring program.

This subsection also directs that an approved Coastal Water Quality Monitoring Program be submitted for approval as part of any relevant coastal zone management program under section 306(g) of the Coastal Zone Management Act (16 U.S.C. 1455(g)).

Finally, subsection (c) directs that applicable monitoring program requirements be incorporated in discharge permits issued to sources in the particular coastal region. Sources currently required to have permits under the CWA National Pollutant Discharge Elimination System (NPDES) program typically must perform monitoring, recordkeeping, and reporting as a condition of a permit.

The NPDES permit is the principal compliance tool of the CWA, and violations of a permit subjects the discharger to enforcement under sections 309 and 505 of that Act. Section 406(c) of this legislation provides that additional monitoring requirements under a coastal water quality monitoring program will be incorporated in a discharge permit and, thus, made enforceable under these provisions of the CWA.

The addition of monitoring program requirements pursuant to this section is deemed to be a minor modification of a NPDES permit. Nevertheless, the Committee intends that any permittee that is required to undertake any monitoring functions under an approved program be afforded an opportunity to review and comment upon those program requirements prior to approval.

SECTION 407—NATIONAL COASTAL WATER QUALITY REFERENCE CENTER

Subsection (a) establishes a National Coastal Water Quality Reference Center within NOAA. The Center shall develop and maintain a data base of coastal water quality monitoring activities conducted pursuant to this Act and other Federal programs.

The data base is not required to contain raw monitoring data, but rather summaries of the activities carried out under each monitoring program (e.g., the physical, chemical, and biological parameters being measured; the monitoring networks, surveys, and analytical techniques used; and a summary of the monitoring results) and details on sources to contact for more information. The data base should also incorporate, to the maximum extent possible, other Federal and State data management and information systems which contain coastal environmental data.

The Committee anticipates that the data base will be maintained on a computer system capable of allowing users to search for information by single or multiple topics. For example, a user should be able to consult the data base and find out which monitoring programs measure tin concentrations in mussels using a particular analytical technique in the Pacific northwest. The Center shall ensure that users from throughout the country can access the catalog through computer linkages.

Subsection (b) directs the Center to request from each Regional Team summaries of the monitoring activities conducted in each region pursuant to this title and other laws. Regional Teams are required to provide this information, as well as actual monitoring data, to the Center and other Federal and State agencies, local officials, and the public upon request.

Title V

Title V of H.R. 2647 provides the necessary compliance and enforcement provisions to complement the substantive water quality and coastal zone management provisions of the legislation.

SECTION 501—PURPOSES OF TITLE V

Section 501 states the purposes of title V, which are to enhance the authority of the Administrator of EPA and the coastal States to enforce Federal and State water pollution control programs in coastal waters of the United States.

SECTION 502—FEDERAL PROCUREMENT

Section 502 provides the Federal government the authority to deny Federal contracts to coastal dischargers found by EPA to be in violation of specified Clean Water Act requirements. This provision expands the Federal Government's current authority under section 508 of the Clean Water Act to deny Federal contracts to persons found to have committed criminal violations of that Act.

Under subsection (a) of this section, EPA is required to provide to Federal agencies a lsit of persons that EPA has found, after consultation with State water quality agencies, to be in significant noncompliance with (1) discharge permits issued under section 402 of the CWA, (2) requirements established in a nonpoint source man-

agement program approved under section 319 of the CWA, or (3) a comprehensive conservation and management plan for an estuary of national significance approved under section 320 of the CWA. Significant noncompliance means that the person has engaged, in a course of severe or chronic violations of sections 402, 319, or 310, and not merely technical or isolated violaitons of those provisions.

Subsection (b) makes persons identified by EPA under subsection (a) ineligible for Federal contracts at facilities which are owned, leased, operated, or supervised by that person and which gave rise to the violation. This prohibition applies to Federal agencies awarding any Federal contract for the purchase of goods, materials or services if the contract is to be performed at a facility identified by EPA under subsection (a).

In accordance with subsection (c), the restriction on the award of contracts under this section continues in effect until the Administrator of EPA certifies that the condition giving rise to the violation has been corrected and an environmental audit has been performed in accordance with section 505. The Administrator must revise the list of violators at least once a year, but this would not preclude the Administrator from certifying compliance of an individual violator once the discharger has performed an environmental audit which demonstrates that the person is now in compliance with those requirements which gave rise to the initial finding.

Subsection (d) requires each Federal agency to review and, as necessary, revise its procurement regulations to implement the requirements of this section. The Committee anticipates that most agencies will have ro revise their procurement regulations to implement this new requirement. The Office of Management and Budget and the General Services Administration should consider revising procurement regulations which apply Government-wide as a guide for regulatory changes by other agencies.

SECTION 503—LIMITATIONS ON FEDERAL DEVELOPMENT PROJECTS AND FINANCIAL ASSISTANCE

Section 503 restricts the award of Federal grants and the construction of development projects in coastal States that have demonstrated a pattern of substantial and willful failure to adopt and attain coastal water quality standards and designated uses. This provision is modeled on section 176 of the Clean Air Act (42 U.S.C. 7506) and, like that provision, is intended to provide EPA a hammer to use in serious cases of State noncompliance.

Subsection (a) prevents a Federal agency from undertaking any development project, or awarding any grant, for any activity that may adversely affect coastal water quality in a coastal State which the Administrator finds has demonstrated a pattern of substantial and willful failure to adopt, attain, and maintain coastal water quality standards and protect designated uses for coastal waters of that State. To implement this provision, the Administrator must issue regulations. By "pattern of substantial and willful failure," the Committee intends a serious and willful disregard by the State of its obligations under this Act and the CWA to adopt and maintain coastal water quality standards and protection of designated

uses. A State's good faith efforts to meet these requirements would normally bar such a finding.

Subsection (b) requires EPA to provide information on an annual basis to Federal agencies to enable them to implement their obligations under subsection (a). The Administrator may provide this information in a Federal Register notice or by direct mailing to Federal agencies.

The prohibition on the award of Federal grants and development projects continues, in accordance with subsection (c), until the Administrator certifies that the condition giving rise to the finding under subsection (a) has been corrected and the applicable water quality standards are being achieved. The Administrator may revise the list of coastal States subject to the finding on an annual basis or sooner if the violations leading to the finding have been corrected.

Under subsection (d), the Administrator must issue regulations identifying the types of development projects and grants to which the restrictions in subsection (a) apply. Eligible projects and grants are those which may adversely affect coastal water quality, such as the construction of highways and other structures in the coastal zone. Federal agencies whose programs are affected by this section must revise their financial assistance regulations and procedures to comply with this section. The section does not apply to any development project or grant whose principal purpose pertains to public health, public safety, or improvement of coastal water quality, or which the President determies to be in the paramount interest of the United States.

SECTION 504—FEDERAL FACILITY COMPLIANCE

This section requires federal facilities that discharge pollutants into coastal waters to comply with the provisions of this Act and the CWA. This is accomplished, in subsection (a), by an express waiver of sovereign immunity to enforce the procedural and substantive requirements of this Act and the CWA. This section makes clear for Federal facilities conducting activities that affect coastal waters what section 313 of the CWA does not expressly provide—that the Federal Government must comply with the procedural and substantive requirements of this Act and the CWA to the same extent a private discharger is required to do so.

Subsection (b) provides the Administrator the authority to take administrative enforcement actions against Federal facilities in violation of the requirements of this Act. In taking such actions, the Administrator may apply the range of civil penalties and sanctions available under section 105 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1415), including the assessment of civil penalties and issuance of administrative enforcement orders.

SECTION 505—ENVIRONMENTAL AUDITING PROGRAM

Section 505 establishes new requirements for the conduct of environmental audits by Federal facilities and industrial and municipal dischargers of pollutants into coastal waters. This section codifies, to a great extent, policy guidance on environmental audits that EPA has issued but not required of dischargers. (51 Fed. Reg.

25004-25010, July 9, 1986). As defined in section 103(11) of the Coastal Defense Initiative and based on EPA's own definition, an "environmental audit" means a systematic, documented, periodic, and objective review of facility operations and practices undertaken by an internal or independent certified environmental auditor for the purpose of evaluating a facility's compliance with environmental laws and regulations and evaluating a facility's practices and procedures to ensure continuing compliance with those laws, regulations, and permit requirements.

Subsection (a) establishes auditing requirements for Federal facilities. Each Federal department, agency, or instrumentality that operates a facility which discharges pollutants into coastal waters, that would otherwise qualify it as a major discharger, must develop and implement on a regular basis an environmental auditing program for its facilities. Within one year, each Federal department and agency subject to this section must submit to EPA a plan to conduct environmental audits of its qualifying facilities. The plan should adhere to the regulations and guidance issued by EPA under subsection (e) of this section. During the first year of the plan's implementation, audits must be conducted twice a year. In subsequent years, audits shall be carried out as often as EPA determines is necessary, depending on the agency's compliance with its obligations under this Act and the CWA.

Subsection (b) establishes auditing requirements for certain industrial dischargers and publicly owned treatment works (POTWs). Each industrial discharger and POTW found to be in significant noncompliance with a permit issued under section 402 or a consent decree approved under section 309 or 505 of the CWA must conduct environmental audits of its facilities on a quarterly basis or until such time as EPA certifies that the discharger is no longer in violation of the permit requirements or consent decree and that the condition giving rise to the certification has been corrected. The environmental audit is an important tool on which both EPA and the audited facility can rely to determine compliance with applicable water pollution control requirements. However, EPA is not precluded from using other available information, including a facility's compliance reports and discharge monitoring reports to make this finding.

Subsection (c) requires major industrial facilities to conduct environmental audits prior to obtaining renewals of their section 402 Clean Water Act discharge permits. Prior to the renewal, each major discharger of pollutants into coastal waters must provide EPA a certification by an approved environmental auditor that an audit has been conducted in the previous three months and that the auditor has certified that each facility subject to a permit or consent decree is in compliance with all Clean Water Act requirements. As noted above, the environmental audit should be a useful compliance mechanism, but EPA is free to use all available information to make its decision on a permit revewal.

Subsection (d) identifies requirements for audits that meet the standards of this section. The audits must be conducted by independent environmental auditors, unless EPA or the State permitting authority, as the case may be, certifies that the discharger has its own environmental auditing program that is fully consistent

with EPA regulations. The Committee expects that many major dischargers have their own auditing programs that will qualify. Subject to the protection of confidential commercial information and trade secrets, copies of the audit may be provided, upon request, to the public.

Subsection (e) requires EPA to issue regulations within one year of enactment for the development and implementation of environmental auditing programs. EPA can build on its experience with voluntary auditing programs and audits now required of dischargers subject to consent decrees to develop the regulations. To assist States in establishing certification programs, EPA is directed to issue guidance to States in six months on the development of State programs for certification of environmental auditors. To issue this guidance, EPA can draw upon the experience of States that already have developed standards for environmental auditing, such as California and New Jersey.

Environmental audits must be conducted by auditors who meet certification requirements in accordance with subsection (f). The Committee expects the States to perform the principal functions of licensing and continuing certification of environmental auditors just as they are now doing for certified financial auditors. To assist the States, within 3 months, EPA must identify minimum eligibility requirements for certified environmental auditors as well as continuing education requirements for maintaining certification. EPA is encouraged to draw upon the expertise of professional auditing organizations in establishing these requirements. Until a State has a certification program that is consistent with the EPA guidance, a permittee may choose an auditor who is qualified under the EPA guidance. After a State has established its own certification program, the permittee must choose an auditor certified by the State in which the permittee has its facilities, unless the permittee establishes, to the permitting authority's satisfaction, that it has an internal auditing program that meets Federal requirements.

Subsection (g) authorizes EPA to withhold from public disclosure confidential commercial information that may be contained in an environmental audit. EPA has the discretion to withhold data that fall within subsection (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)) for confidential commercial information and trade secrets. EPA must protect from public disclosure data that qualify for trade secret protection under 18 U.S.C. 1905.

SECTION 506—ELIMINATION OF ECONOMIC INCENTIVES

Section 506 amends the civil penalty provisions of the CWA and the Marine Protection, Research, and Sanctuaries Act of 1972 to eliminate economic incentives for violating those two acts. Section 309 of the CWA and section 105 of the MPRSA are amended to require that an administrative or judicial penalty be set at least at an amount that will eliminate any economic benefit or savings that may have accrued to a discharger who has violated either Act. This provision codifies an element of EPA enforcement policy and demonstrates the Committee's intent to eliminate any economic incentive to pollute coastal and ocean waters.

SECTION 507—POSTING OF COASTAL WATERS

Section 507 requires each coastal State to post signs informing the public which waters are not in compliance with coastal water quality standards and designated uses and the principal public health and environmental effects that may result because of non-compliance. This section will provide the public a clear way of knowing which waterbodies do and do not meet water quality standards and to monitor a State's compliance with the Clean Water Act. The signs, which may be positioned by State or local authorities, shall be clearly visible and placed at all major places of public access to the waterbody, including public roads, at public beaches, parks, and marinas. The signs are to be maintained by the State or local government until the waterbody is in compliance with applicable standards. EPA is directed to issue guidance to States in six months on the posting requirements in this section.

SECTION 508—ENFORCEMENT

Section 508 provides that, for enforcement purposes, any violation of this Act is also deemed to be a violation of title I of the MPRSA and may be enforced under section 105 of the Act (33 U.S.C. 1415). This provision enables EPA to apply the enforcement provisions of the MPRSA, including civil and criminal penalties, to violations of the Coastal Defense Initiative. The Committee recognizes that EPA may wish to include personnel to enforce this act similar to the increases proposed in H.R. 3894 introduced by Congresswoman Martin.

SECTION 509—OCEAN DUMPING ENFORCEMENT

Section 509 amends title I of the MPRSA, commonly known as the Ocean Dumping Act, to enhance enforcement under that Act.

Paragraph (1) clarifies that the dumping of material into ocean waters is prohibited without a permit or other authorization, regardless of why the material is transported. This change overturns a decision in *U.S.* v. *Baytank (Houston Inc.*, No. 87-220 (S.D. TX), which held that persons can avoid criminal prosecution under the Ocean Dumping Act even though they knowingly dumped material into the ocean, because the Federal Government failed to prove that the primary purpose of transporting the material was to dump it in the ocean.

Paragraph (2) allows EPA to deny permits to dump material into the ocean if the material does not comply with the statutory and regulatory criteria developed by EPA under section 102(a) of the Ocean Dumping Act. This amendment overturns the decision in the *City of New York* v. *U.S. Environmental Protection Agency,* 543 F. Supp. 1084 (S.D.N.Y. 1981). There court held that the Ocean Dumping Act did not authorize EPA to deny an ocean demping permit solely on the basis of "flunking" EPA criteria relating to the effects of ocean dumping on the marine environment. Nothing in this language is intended to alter in any way the unconditional prohibitions against ocean dumping of sewage sludge or industrial waste established under the Ocean Dumping Ban Act of 1988 (Public Law 100-688).

Paragraph (3) increases EPA's authority to assess administrative civil penalties for violations of the Ocean Dumping Act from $50,000 per incident to $75,000, with an overall cap of $200,000. This practice is consistent with other environmental statutes, which provide lower penalties for less formal administrative proceedings, while restricting larger penalty assessments to civil judicial actions. Again, the provision does not affect the assessment of civil penalties under section 104B of the Ocean Dumping Act.

Finally, paragraph (4) authorizes EPA to grant bounties of up to $10,000 to persons who have furnished information leading to civil liability or a criminal conviction under the Ocean Dumping Act. This new provision is based on similar provisions in the Endangered Species Act (16 U.S.C. 1540(d)) and the Lacey Act (16 U.S.C. 3375(d)). The Committee hopes that this incentive will encourage persons with information regarding a violation to come forward and share their information with government enforcers.

Title VI

Title VI of H.R. 2647 establishes financing mechanisms for implementing the substantive portions of the bill. The Committee expects that these provisions will greatly assist Federal, State, and local governments in fulfilling the substantial obligations required to protect and maintain coastal water quality.

SECTION 601—PURPOSES

Section 601 provides the purposes of title VI, which are to establish a Coastal Defense Fund in the U.S. Treasury, authorize establishment of State coastal protection funds to preserve and protect coastal water quality efforts, and authorize financing of State coastal protection funds with revenues from a National Coastal Effluent Fee and other sources.

SECTION 602—COASTAL DEFENSE FUND

Section 602 establishes the Coastal Defense Fund in the U.S. Treasury. This Fund will be the principal mechanism for providing assistance to coastal water quality programs under the Coastal Defense Initiative. Under subsection (a), this special fund is to consist of amounts deposited or transferred to it. Additionally, the Secretary of the Treasury is to invest portions that remain unobligated at the end of a fiscal year in interest-bearing obligations of the United States. The interest on and proceeds from these obligations will become part of the Fund. Subject to appropriation, amounts in the State Coastal Defense Fund will remain available until expended to carry out the State grants provisions in section 603 of the legislation.

Subsection (b) identifies the three sources which will be used to support the Fund. They are: (1) receipts from the National Coastal Effluent Fee System established by section 604 which are collected by EPA; (2) fines, penalties and other payments assessed under the enforcement provisions of the CWA and the Marine Protection, Research, and Sanctuaries Act of 1972, under section 605; and (3) transfer of funds equal to a portion of mineral receipts from the Outer Continental Shelf, pursuant to section 606 of this Act.

Based on preliminary estimates, the Committee believes that deposits in the Coastal Defense Fund will total approximately $158 million annually, consisting of approximately $69 million from the effluent fee system, $5 million from fines and penalties, and $84 million representing Outer Continental Shelf receipts.

SECTION 603—STATE GRANTS

Section 603 details procedures for awarding grants to States from the Coastal Defense Fund. Subsection (1) provides that eligible coastal States will be those that establish a coastal protection fund in which grants will be deposited and agree to expenditure and reporting procedures under the CDI.

Grants from the Coastal Defense Fund will be made by the EPA Administrator and the Under Secretary for Oceans and Atmosphere, Department of Commerce (NOAA). Under subsection (b), the Administrator and the Under Secretary are to consider the following factors when making grant awards: (1) the State's identification of coastal waters under section 304(n) of the CWA, as added by CDI section 203, and Outstanding Resource Waters under section 204; (2) the extent and nature of development of the shoreline and area of the State's coastal zone; (3) population trends in the State's coastal zone; (4) the State's participation in the regional monitoring program under title IV of this Act; (5) the State's participation in the coastal zone management program; (6) effluent fees paid by a State's coastal dischargers under this Act; and (7) other factors that may be appropriate.

Subsection (c) provides for the allocation of grants under this section. Subsection (c)(1)(A) directs that 30 percent of revenues available from the Coastal Defense Fund are to support coastal water quality activities, including preparing and implementing coastal water quality protection plans under section 304(n) of the CWA, and identifying and implementing plans for Outstanding Resource Waters under section 204 of this Act.

Under subsection (c)(1)(B), 30 percent of revenues available from the Coastal Defense Fund are to prepare and implement Aquatic Resources Protection Programs under the new section 306B of the CZMA, as added by title III of CDI.

Subsection (C)(1)(C) provides that 20 percent of revenues from the Coastal Defense Fund are to be available as grants to implement regional monitoring programs under title IV of this Act.

Finally, EPA and NOAA are to receive funding, as well, under subsection (c)(1)(D). Each agency is to receive 10 percent of revenues available from the Fund to fulfill its requirements under this Act.

Subsection (c)(2) directs EPA and NOAA to enter into an agreement within six months of enactment establishing mechanisms by which they will coordinate their responsibilities under this title. The Committee intends that, in carrying out the grant provisions of the legislation, EPA and NOAA will strive to award grants in a manner that will maximize improvements in coastal water quality and otherwise achieve the purposes of this Act.

Subsection (c)(3) provides that, before receiving grants, States are to identify how the funds will be used and are to ensure that

grants will not supplant non-Federal funds that would otherwise be used. States also are to match Federal grants under this section by 25 percent, using non-Federal funds.

SECTION 604—COASTAL EFFLUENT FEE SYSTEM

Section 604 establishes an effluent fee system applicable to coastal dischargers. Revenues from this fee system will support grants made from the Coastal Defense Fund, thus enabling State, local, and Federal governments to carry out the substantive requirements of the legislation for protecting and maintaining coastal water quality. This portion of the bill establishes a requirement that dischargers into coastal waters pay fees sufficient to cover the reasonable costs of administering the permit program under section 402 of the CWA NPDES Program for coastal dischargers and the industrial pretreatment program under section 307 of that Act for coastal dischargers.

Subsection (a) requires EPA, within two years of enactment, to issue regulations establishing a National Coastal Effluent Fee System applicable to direct dischargers and significant industrial users of publicly owned treatment works (POTWs) and other categories or classes of dischargers that the Administrator identifies. Section 103(6) of CDI defines coastal dischargers that may be subject to the National Coastal Effluent Fee System to include a direct or indirect point source that discharges pollutants into coastal waters, except POTWs, and a significant industrial user of any POTW that discharges pollutants into coastal waters. Section 103(16) of the legislation further defines significant industrial user to mean any nondomestic source of pollutants introduced into a POTW which discharges into coastal waters that is subject to categorical pretreatment standards under section 307(b) of the CWA (33 U.S.C. 1317(b)) or other indirect dischargers that have a reasonable potential to affect adversely the operation of a POTW, as determined by the EPA Administrator.

Fee collections are to begin not later than 6 months after the fee system is established. The Committee intends that the fee system shall supplement Federal, State, and local programs to achieve and maintain coastal water quality and provide economic incentives for coastal dischargers to eliminate (or, where elimination is not possible, to reduce) the volume or toxicity of effluents. Subsection (b) makes these objectives explicit.

Subsections (c) and (d) detail the process by which EPA will determine the types of costs to be covered by the fee system and the process for determining the schedule of fees to be assessed against classes or categories of coastal dischargers. The Committee anticipates that this will be a two-step process. As a first step, under subsection (c), EPA will determine the program costs of the CWA section 402 permit and section 307 pretreatment programs for coastal dischargers, including the reasonable costs of reviewing and acting upon permit applications, enforcing permits (except for court costs), monitoring activities, preparing relevant regulations or guidance, conducting research related to such regulations or guidance, and performing modeling, analyses, and demonstrations. This calcula-

tion of costs to administer the NPDES and pretreatment programs will determine the total revenues that the fee system will collect.

The Committee intends that when EPA calculates program costs under this section, it shall consider the full range of costs and factors required to administer these programs, unconstrained by limitations such as budgetary considerations. EPA's determination of program costs should reflect amounts required to implement fully permitting, standard-setting, monitoring, and the other activities identified in the legislation, and not be confined to whether those activities are fully supported by EPA's currently available budgetary resources or budget requests.

The Committee would expect EPA to calculate program costs based on levels that reflect the full extent of program activity, levels which in all likelihood will be higher than the overhead costs of the Federal Government's "cost of doing business" or budgetary limits.

Subsection (d) provides the second step in implementing the fee system. Having determined such costs in the aggregate, EPA will establish specific fee schedules for categories, classes, types, and sizes of coastal dischargers based on the permitted flow of the source, relative toxicity of the discharge, the ability of dischargers to reduce the volume or flow of the discharge, equity among dischargers, and other factors that may be appropriate. These fee schedules will allocate the aggregate calculation of program costs, which EPA will make under subsection (c), for specific categories of coastal dischargers.

The Committee intends that EPA's implementation of this provision should foster a "polluter pays" principle, requiring those sources with more toxic discharges or larger wastewater load to pay higher fees. Witnesses testified during the Subcommittees' hearings that fees based on such a concept provide an economic incentive to dischargers to reduce their pollutant load. Experience with effluent fees in Europe, particularly in the Federal Republic of Germany, has confirmed this theory and several States which currently administer their own effluent fee systems report similar results.

Nevertheless, the Committee intends that the principal objective of the coastal effluent fee system should be to recover the costs of administering the major permit and pretreatment programs applicable to coastal dischargers. Where EPA's fee schedules do provide an economic signal to dischargers to reduce wastes and pollutant loads, a secondary objective of water quality benefits may be achieved.

Fee schedules are to be adjusted at least every three years to account for inflation. Failure to pay a fee shall result in a 50 percent penalty, on top of the amount of the fee which the discharger is already required to pay. Amounts paid by dischargers in fines, interest penalties, etc., will be deposited in the Coastal Defense Fund.

Subsection (d)(7) provides that, after notice and comment, EPA may exempt individual dischargers from fee requirements, upon a showing by the source of financial hardship, circumstances of material difference between it and other dischargers in the same class or category, or other factors that EPA considers appropriate. Exemptions expire five years after issuance, or when the source's

NPDES permit expires, whichever is later; this exemption may be renewed. The Committee expects that EPA's actions under this subsection will be strictly limited to situations of demonstrated need for an exemption.

Subsection (e) concerns collection of fees in States administering their own effluent fee systems. Under the general provisions of this title, EPA will collect National Coastal Effluent Fees and deposit the revenues (plus any penalties and interest) in the Coastal Defense Fund. However, in States with their own effluent fee systems, the State may petition EPA for exemption from the Federal fee system. EPA shall waive Federal fees if it determines that the aggregate amount of State fees collected from coastal dischargers is equivalent to amounts that would be collected in the State under the Federal system.

If a State collects fees but in amounts less than determined by EPA to cover program costs, EPA will collect fees representing the difference between State and Federal fee amounts and deposit revenues in the Coastal Defense Fund. For example, if a State currently collects $1,000 in fees from a discharger, and the Federal fee on that discharger would otherwise be $1,500, the Federal Government will collect $500. The State will continue to collect and retain its $1,000 fee. It will be necessary for EPA to determine which coastal States are eligible for waiver of the Federal fee and in which other States, Federal fee assessments will reflect the differential between State and Federal fees.

Currently more than 15 coastal States administer fee systems, although they vary greatly in design, detail, and amounts collected. A few may already be assessing fees sufficient to cover the costs of administering the NPDES permit and pretreatment programs, as required of Federal fees under H.R. 2647. The Committee expects that these States will petition EPA to waive the Federal fees, under the provisions of this subsection. Further, the Committee expects that, over time, many coastal States will modify existing fee systems or implement new fee programs. Consequently, additional States are likely to petition EPA to waive the Federal fees. While these State actions will reduce one portion of the revenues to be deposited in the Coastal Defense Fund, because EPA will cease to collect fees in those States, the larger objective of supporting State and local coastal water quality efforts will be enhanced.

Under these provisions, the Committee intends that the rights and prerogatives of coastal States with existing fee systems not be preempted by the Federal fee system established under the provisions of this legislation.

Under subsection (f), fees paid by significant industrial users of POTWs are to be retained by the Federal, State, interstate, or municipal authority responsible for that POTW, with revenues to be used to support implementation and enforcement of water quality programs consistent with requirements of this Act. The POTW control authority shall submit reports on its fee receipts and expenditures related to these fees as EPA or the State may require.

Based on preliminary estimates of costs to implement the pretreatment program for industrial users of POTWs which discharge into coastal waters, the Committee believes that POTW control authorities will retain approximately $21 million annually under this

provision. These amounts are in addition to the approximately $69 million in effluent fees which the Committee believes will be collected by EPA from coastal dischargers and deposited in the Coastal Defense Fund.

The Committee recognizes that POTW control authorities do generally collect fees from industrial and other users of their facilities to support operations and maintenance and other needs.

Often, however, these authorities fail to collect fees which cover the range of activities, including monitoring, testing, and enforcement, needed to implement a comprehensive local pretreatment program. The Committee anticipates that fees which POTWs retain under this subsection with augment funds now available to these authorities and will not substitute for other types of user fees that the authority already collects.

Subsection (g) specifies that nothing in title VI shall limit a State or political subdivision of a State from establishing additional effluent fee requirements. Further, nothing in section 604 shall affect the obligation of coastal dischargers to comply with requirements of the CWA, adn the effluent fee system established in this Act shall be in addition to all requirements of the CWA.

Subsection (h) directs EPA to study and report to Congress in one year on the feasibility of expanding the effluent fee system in three respects: (1) implementing a fee system based on preventing pollution, e.g., to design fee schedules with the objective that sources will reduce pollutant discharges to reduce fee payments; (2) including POTWs in a fee system; and (3) implementing an effluent fee system in inland as well as coastal waters and applying a fee system to other sources of polluton, such as nonpoint sources.

The Committee has chosen not to inlude a fee system based fully on "pollution prevention" concepts in the legislation at this time, due to complexity and other implementation issues likely to delay establishing the fee system. Nevertheless, the Committee sees merit in the long run in incorporating such an approach in the fee system mandated by this legislation and expects that EPA's report, prepared in response to this subsection, will guide further legislative action in this area.

Likewise, the EPA report will serve as the basis for considering the merits of expanding the sources and waters covered by a fee system for example, the CDI currently excludes POTWs and nonpoint sources of pollution, as well as dischargers into non-coastal waters. The EPA report should evaluate the inclusion of these sources and expansion to non-coastal waters, to achieve equity and efficiency through a national fee system.

SECTION 605—FINES, PENALTIES AND OTHER PAYMENTS

Sections 605 and 606 provide for the additional revenue sources which will comprise the Coastal Defense Fund in the U.S. Treasury.

Section 605 requires that penalties, fines, or other payments assessed for violations under section 309 or 505 of the CWA and section 105 of the MPRSA be deposited in the Fund (with the exception of amounts awarded as costs of litigation or amounts reserved to finance environmental credit projects). This is similar to the en-

forcement fund proposed in H.R. 3994. These amounts also would not include fines or penalties assessed under the Ocean Dumping Ban Act of 1988 (Public Law 100–688), which are authorized in section 104B of the MPRSA (33 U.S.C. 1414b).

SECTION 606—OUTER CONTINENTAL SHELF REVENUES

Section 606 provides that funds equal to a portion of mineral receipts from the Outer Continental Shelf (OCS) be deposited in the Fund. The prescribed amounts are to equal 10 percent of the amount by which all OCS mineral receipts deposited in the U.S. Treasury during the particular fiscal year exceeded OCS mineral receipts during fiscal year 1989. Based on preliminary estimates from the Congressional Budget Office, the Committee that the amounts to be deposited in the Coastal Defense Fund annually under this provision will be approximately $84 million.

COMPLIANCE WITH CLAUSE 7, RULE XIII

In accordance with paragraph (d) of this cluase, the provisions of this clause do not apply where a cost estimate and comparison prepared by the Director of the Congressional Budget Office has been included in this report.

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that the enactment of H.R. 2647 would not have a significant inflationary impact on the nation's economy.

COMPLIANCE WITH CLAUSE 2(l)(3) OF RULE XI

Pursuant to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives:

(A) The Subcommittee on Fisheries and Wildlife Conservation and the Environment and the Subcommittee on Oceanography and the Great Lakes held joint legislative hearings on H.R. 2647 on June 27, 1989, September 20, 1989, October 19, 1989, and March 6, 1990.

(B) The requirements of section 308(a) of the Congressional Budget Act of 1974 are not applicable to this legislation.

(C) The Committee on Mercant Marine and Fisheries has received no report from the Committee on Government Operations of oversight findings and recommendations arrived at pursuant to clause 4(c)(2) of rule X of the Rules of the House of Representatives.

(D) The Director of the Congressional Budget Office has furnished the Committee with the following estimate and comparison of costs of H.R. 2647 pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 9, 1990.

Hon. WALTER B. JONES,
Chairman, Committee on Merchant Marine and Fisheries,
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for H.R. 2647, the Coastal Defense Initiative of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

CONGRESSIONAL BUDGET OFFICE—COST ESTIMATE

1. Bill number: H.R. 2647.
2. Bill title: Coastal Defense Initiative of 1990.
3. Bill status: As ordered reported by the House Committee on Merchant Marine and Fisheries, April 25, 1990.
4. Bill purpose: This bill would expand federal and state regulation of coastal water quality and establish new fees and a fund to provide financing for additional activities. In addition, the bill would authorize appropriations for several programs.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorizations:					
Specified level	30	40	40	40	40
Estimated level	33	70	61	76	93
Total estimated authorizations	63	110	101	116	133
Estimated outlays	41	89	100	111	126

The above table does not include potential revenues from coastal effluent fees, nor does it include spending of such receipts. In addition, the table does not contain costs that would be incurred by federal departments and agencies under the compliance provisions of Title V or the costs after 1991 to construct the dredge disposal project authorized in Title II. CBO does not have sufficient information to estimate the budget impact of these items.

The cost of this bill would fall primarily within budget function 300.

Basis of estimate: This estimate assumes that H.R. 2647 would be enacted late in fiscal year 1990, and that the necessary funds would be appropriated for fiscal year 1991 and subsequent years. Authorization levels have been estimated on the basis of information obtained from the Environmental Protection Agency (EPA). Outlays are based on historical spending patterns for similar programs.

Coastal Defense Fund: Title VI would establish a Coastal Defense Fund (CDF) that would be credited with fees collected under the coastal effluent fee system that would be created by the bill, a por-

tion of the annual increase in Outer Continental Shelf revenues, fines and penalties specified in Section 605, and interest from the investment of any unobligated fund balances. CBO estimates that the fund would be credited with $28 million in fiscal year 1991. The amount would increase to $88 million by 1995.

The bill would authorize the appropriation of amounts in the fund for various required activities. H.R. 2647 would establish an Aquatics Resources Protection Program in the National Oceanic and Atmospheric Administration (NOAA), and would allocate 30 percent of the funds in the CDF for state grants and 10 percent of CDF funds for NOAA costs. The bill also would require states to develop coastal water quality protection programs and designate outstanding coastal resource waters. The bill would allocate 30 percent of CDF funds for grants for these purposes. In addition, H.R. 2647 would establish a coastal water quality monitoring program, and would earmark 20 percent of CDF funds for regional monitoring teams. Finally, the bill would allocate 10 percent of CDF funds for EPA activities.

Coastal Effluent Fee System: Section 604 of the bill directs the EPA Administrator to set up a system of fees to cover the costs of: administering (1) the National Pollutant Discharge Elimination System under Section 402 of the Clean Water Act for coastal dischargers, and (2) the program for pretreatment of industrial wastes by publicly owned treatment works that discharge into coastal waters under Section 307 of the Clean Water Act. The fees would be assessed on coastal dischargers and would be deposited into the Coastal Defense Fund. Collection of the fee would begin no later than 30 months after enactment of this bill. Federal government fee collections would be reduced in states having similar effluent charges by the amount of state collections. Affected states could petition and receive an exemption from the federal fee system if the aggregate fee collections under the state fee system were equivalent to expected collections in that state under the federal fee system. In addition, the Administrator must provide for a special hardship exemption from the fees for coastal dischargers who demonstrate that payment of these fees would necessitate undue financial hardship or meet other criteria.

CBO cannot estimate the amount of fees that would be collected under the proposed fee system, because we cannot determine the extent to which states would implement their own effluent fees and the extent to which exemptions from the federal fee system would be granted to coastal dischargers. The bill also would authorize the Administrator to assess penalties on coastal dischargers who fail to pay federal coastal emissions fees. The penalties would equal 50 percent of the fee plus interest. CBO expects that penalties collected would be negligible, because we assume that, in general, dischargers would pay the fee.

The bill would provide for the revenues collected under the fee and penalty provisions to be deposited in the CDF and would authorize the appropriation of these amounts from the fund. Although CBO cannot estimate the amount of gross fee collections, net revenues received by the federal government would be less than the amount credited to the fund due to partly offsetting income and payroll tax revenues. As a result, additional spending

from the CDF would, over time, exceed the amount of net additional revenues realized from the fees.

National Estuary Program: Title II would increase funding available for estuary conservation and management plans under the National Estuary Program. The bill would increase the amount authorized for appropriation as grants to develop conservation and management plans from $12 million in fiscal year 1991 to $20 million in each of the fiscal years 1991 through 1995. In addition, the bill would authorize the appropriation of $20 million annually in fiscal years 1991 through 1995 for grants to implement the plans.

Dredged Material Project and Report: H.R. 2647 would require the Secretary of the Army to implement a demonstration project to dispose of up to 10 percent of the material dredged from the New York/New Jersey Harbor region. The bill would authorize the appropriation of $1 million in fiscal year 1991 for this purpose and such sums as may be necessary in 1992. Information from the U.S. Army Corps of Engineers (Corps) indicates that the costs of constructing the various disposal alternatives vary greatly, ranging from as little as $5 million for beach disposal to as much as $500 million for the construction of a containment island. The Corps has not determined which alternative for dredge disposal is appropriate. CBO is therefore unable to estimate the costs of implementing the demonstration project beyond 1991.

H.R. 2647 also would require the EPA Administrator and the Secretary of the Army to develop a plan for long-term management of dredged material from this harbor region within 180 days. The bill would authorize the appropriation of $500,000 in 1991 for this activity.

Federal Agencies and Facilities: Title V would require federal departments and agencies that operate certain facilities that discharge pollutants into coastal waters to conduct ongoing environmental audit programs, including a biannual audit of each facility. Based on information from EPA, CBO estimates that up to 150 federal facilities could be affected and that each audit could cost between $50,000 to $100,000. With audits required every two years, CBO estimates the annual costs would be about $5 million. The Department of Defense is most likely to be affected by this requirement.

Title V also would waive sovereign immunity for enforcement actions taken against federal departments and agencies that operate facilities that discharge pollutants into coastal waters. As a result, the federal government could be liable for penalties or other sanctions imposed in administrative, civil, or criminal actions. The budget impact of this provision is uncertain and cannot be estimated with any precision.

Finally, Title V would require that penalties assessed in civil actions for ocean dumping violations or for the discharge of pollutants in coastal waters be set at levels that eliminate any economic benefit or saving to the polluter that resulted from the action. To the extent that the amount of penalties collected under this provision would differ from the amount collected under current law, federal receipts could vary. However, CBO cannot estimate any potential difference.

6. Estimated costs to State and local governments: This bill would require 30 states to expand their current coastal water quality activities. Based on information from EPA, CBO estimates that state and local governments would incur additional costs of about $320 million during the 1991-1995 period as a result of this bill. This amount does not include the costs of preparing and implementing an aquatic resources protection program of implementing pollution control strategies, which could be substantial.

Grants: In aggregate, the federal grants that would be authorized for appropriation from the CDF would provide funding to cover about 50 percent of the additional costs. During the 1991-1995 period, CBO estimates that these grants would total about $150 million. However, the grant amounts that would be authorized for appropriation to carry out specific requirements of the bill would not in all instances cover the portion of the state costs of the requirements. For example, the bill would provide for grants of about $90 million from 1991 through 1995 for states to develop coastal water quality protection programs. CBO estimates that the state costs imposed by this requirement would total about $270 million during the five-year period, mostly for the development of pollution control strategies that would begin in 1993. The bill also would provide for about $60 million in grants from 1991 through 1995 for states to implement regional monitoring programs. CBO estimates that state and local governments would incur costs of about $25 million during these five years for these programs.

State and local governments also would be eligible for the $40 million in grants that would be authorized for appropriation to develop and implement estuary conservation and management plans. These funds also would be available to nonprofit agencies and other private groups and individuals. Based on information from EPA, CBO assumes that most of the grants would be awarded to public agencies.

Revenues: The bill would provide municipal and state authorities with potential additional revenues under the coastal effluent fee system. Title VI would provide for industrial users of publicly owned treatment works that discharge pollutants into coastal waters to pay the fees they are assessed under the coastal effluent fee system to the municipal authority that controls the treatment works. In addition, the bill would allow states to assess coastal effluent fees and retain the revenues collected. CBO does not have sufficient information to estimate the potential revenues that municipal and state governments would collect under these provisions.

7. Estimate comparison: None.

8. Previous CBO estimate: On June 27, 1990, CBO prepared a cost estimate for S. 1178, the Coastal Protection Act of 1990. The estimated costs of that bill differ from the costs estimated for H.R. 2647 primarily because the requirements of the bill vary and because the amount authorized for appropriation differ.

9. Estimate prepared by: Laura Carter, Michael Sieverts, Theresa Gullo, James Hearn, and Linda Radey.

10. Estimate approved by: James L. Blum, Assistant Director for Budget Analysis.

Departmental Reports

The Committee solicited comments on H.R. 2647, or various proposed versions thereof, from the Environmental Protection Agency; the Department of Commerce; and the Corps of Engineers, Department of the Army. The Committee received no comments from these departments.

Changes in Existing Law

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, as amended, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

16 U.S.C. 1451-1455*b*

§ 1451. Congressional findings

The Congress finds that—

* * * * * * *

(k) Land use in the coastal zone, and the use of adjacent lands which drain into the coastal zone, may affect the quality of coastal waters and habitat, and efforts to control coastal water pollution from land use activities must be improved.

§ 1452. Congressional declaration of policy

The Congress finds and declares that it is the national policy—

(1) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations;

(2) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone, giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, which programs should at least provide for—

(A) the protection of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat, within the coastal zone,

(B) the management of coastal development to minimize the loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion, and by the destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands,

(C) the management of coastal development to protect the quality of coastal waters and to prevent the impairment of existing uses of those waters,

[(C)] *(D)* priority consideration being given to coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists,

[(D)] *(E)* public access to the coasts for recreation purposes,

[(E)] *(F)* assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features,

[(F)] *(G)* the coordination and simplification of procedures in order to ensure expedited governmental decision-making for the management of coastal resources,

[(G)] *(H)* continued consultation and coordination with, and the giving of adequate consideration to the views of, affected Federal agencies,

[(H)] *(I)* the giving of timely and effective notification of, and opportunities for public and local government participation in, coastal management decisionmaking, and

[(I)] *(J)* assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies; and

* * * * * * *

§ 1455b. Managing land uses that affect coastal waters

(a) IN GENERAL.—

(1) PROGRAM DEVELOPMENT.—Not later than 3 years after the effective date of this section, the management agency chosen pursuant to section 1455(d)(5) by each State for which a program has been approved pursuant to section 1455 (hereinafter in this section referred to as the "coastal management agency"), shall prepare and submit to the Under Secretary of the Aquatic Resources Protection Program (hereinafter in this section referred to as the "program") for approval pursuant to subsection (c). The purpose of the program shall be to develop and implement coastal land use management measures for land-based sources of nonpoint-source pollution, working in close conjunction with other State and local authorities.

(2) PROGRAM COORDINATION.—The program shall be developed, submitted, and implemented in conjunction with and as a part of the comprehensive coastal water quality protection program under section 304(n) of the Federal Water Pollution Control Act. In developing and carrying out the program, the coastal management agency shall coordinate closely with State and local water quality authorities. Each program shall be integrated with the State's coastal water quality program under

section 304(n) of the Federal Water Pollution Control Act, and shall be compatible and coordinated with the programs developed pursuant to sections 208, 303, 319, and 320 of that act.

(b) PROGRAM CONTENTS.—The Secretary shall approve a program under this section if it provides for the following:

(1) IDENTIFYING LAND USES.—The identification of, and a continuing process for identifying, land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of—

(a) those coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, as determined by the States pursuant to its water quality planning processes;

(B) those coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources; or

(C) Outstanding Coastal Resource Waters designated pursuant to section 204 of the Coastal Defense Initiative of 1990.

(2) IDENTIFYING CRITICAL AREAS.—The identification of, and a continuing process for identifying, critical coastal areas within any new land uses or substantial expansion of existing land uses will be subject to the land use management measures that are determined necessary by the coastal management agency, in cooperation with the State water quality authorities and other State or local authorities, as appropriate, to be necessary to protect and restore coastal water quality and designated uses.

(3) COASTAL LAND USE MANAGEMENT MEASURES.—(A) The implementation and continuing revision from time to time of land use management measures applicable to the land uses and areas identified pursuant to paragraphs (1) and (2) that the coastal management authority, working in conjunction with the State water pollution control agency and other State and local authorities, determines are necessary to achieve applicable water quality standards and protect designated uses.

(B) Coastal land use management measures under this paragraph may include, among other measures, the use of—

(i) buffer strips;

(ii) setbacks;

(iii) density restrictions;

(iv) techniques for identifying and protecting critical coastal areas and habitats;

(v) soil erosion and sedimentation control; and

(vi) siting and design criteria for water uses, including marinas.

(4) TECHNICAL ASSISTANCE.—The provision of technical and financial assistance to local governments and the public for implementing the measures referred to in paragraph (3), including assistance in developing ordinances and regulations; technical guidance and modeling to predict and assess the effectiveness of such measures; training; financial incentives; demonstration projects; and other innovations to protect coastal water quality and achieve and maintain designated uses.

(5) PUBLIC PARTICIPATION.—Opportunities for public participation in all aspects of the program, including the use of public notices and opportunities for comment, nomination procedures, public hearings, technical and financial assistance, public education and other means and measures.

(6) ADMINISTRATIVE COORDINATION.—The establishment of mechanisms to improve coordination among State agencies and between State and local officials responsible for land use programs and permitting, water quality permitting and enforcement, habitat protection, and public health and safety, through the use of joint project reviews, interagency certifications, memoranda of agreements, and other mechanisms.

(7) STATE COASTAL ZONE BOUNDARY MODIFICATION.—Modification of the boundaries of the State coastal zone as the coastal management agency determines is necessary to manage the land uses identified pursuant to paragraph (1) and to implement, as may be required, the recommendations made pursuant to section 1452.

(c) PROGRAM SUBMISSION AND APPROVAL.—

(1) PROCEDURES.—The submission and approval of a proposed program shall be governed by the procedures established by section 1455(g).

(2) ELIGIBILITY FOR AND WITHHOLDING OF ASSISTANCE.—(A) Except as provided in subparagraph (B), if the Under Secretary finds that a coastal State has failed to submit an approvable program as required by this section, the State shall not be eligible for any funds under section 603 of the Coastal Defense Initiative of 1990, and the Under Secretary shall withhold a portion of grants otherwise available to such State under section 1455 of this title as follows:

(i) 10 percent after 3 years after the date of the enactment of this section.

(ii) 15 percent after 4 years after the date of the enactment of this section.

(iii) 20 percent after 5 years after the date of the enactment of this section.

(iv) 30 percent after 6 years after the date of the enactment of this section and thereafter.

The Under Secretary shall make amounts withheld under this subparagraph available to States having programs approved under this section.

(B) If the Under Secretary finds that a State has made satisfactory progress in developing a program under subsection (a) and that additional time is required for the State to complete necessary statutory or regulatory changes to develop the program, the Under Secretary may authorize no more than 3 additional years for the State to comply with this section.

(3) GUIDELINES.—Within 180 days after the effective date of this section, the Under Secretary shall issue guidelines for coastal States to follow in developing a program. Within 18 months after that effective date, the Under Secretary shall promulgate regulations governing the receipt, review, and approval of program under this section.

(d) TECHNICAL ASSISTANCE.—The Under Secretary, in consultation with the Administrator and other Federal agencies, shall provide technical assistance to States and local government in developing and implementing programs under this section. Such assistance shall include—

(1) methods for assessing water quality impacts associated with coastal land uses;

(2) methods for assessing the cumulative water quality effects of coastal development;

(3) maintaining and from time to time revising an inventory of model ordinances, and providing other assistance to State and local governments in identifying, developing, and implementing pollution control measures; and

(4) methods to predict and assess the effects of coastal land use management measures on coastal water quality and designated uses.

(e) FINANCIAL ASSISTANCE.—From amounts appropriated pursuant to section 603(c)(1)(B) of the Coastal Defense Initiative of 1990, the Under Secretary shall provide grants to each coastal State to assist in fulfilling the requirements of this section if the coastal State matches any such grant according to a 4 to 1 ratio of Federal to State contributions.

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33 U.S.C. 1311(a)

§ 1311. Effluent limitations

(a) ILLEGALITY OF POLLUTANT DISCHARGES EXCEPT IN COMPLIANCE WITH LAW.—Except as in compliance with this section and sections 1312, 1316, 1317, 1328, 1342, 1343, and 1344 of this title, the discharge of any pollutant by any person shall be unlawful.

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33 U.S.C. 1313

§ 1313. Water quality standards and implementation plans

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(c) REVIEW; REVISED STANDARD PUBLICATION.—

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(2)(A) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this chapter. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

* * * * * * *

(C)(i) Within 2 years after the effective date of this paragraph and thereafter whenever a coastal State reviews water quality standards pursuant to paragraph (1), the State shall adopt coastal water quality standards for those pollutants for which criteria and information have been issued under section 1314(a)(9).

(ii) Standards adopted by a State under this subparagraph shall be designed to protect the designated uses adopted by the State and achieve the goals of the Act.

(iii) If a coastal State fails to adopt coastal water quality standards that are approved by the Administrator under section 1314(a)(9), the criteria issued pursuant to section 1314(a)(9) shall take effect immediately as enforceable water quality standards for that State pending the adoption of applicable State standards.

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(d) IDENTIFICATION OF AREAS WITH INSUFFICIENT CONTROLS; MAXIMUM DAILY LOAD.—(1)(A) Each State shall identify those waters within its boundaries for which the effluent limitations required by section 1311(b)(1)(A) and section 1311(b)(1)(B) of this title are not stringent enough to implement any water quality standard applicable to such waters, *and those coastal waters of the State which are otherwise failing to attain or maintain applicable water quality standards or designated uses.* The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

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(2) Each State shall submit to the Administrator from time to time *(but at least once each 3 year period)*, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 1314(a)(2)(D) of this title, for his approval the waters identified and the loads established under paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determined necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

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33 U.S.C. 1315

§ 1315. State reports on water quality; transmittal to Congress

(a) Omitted.

(b)(1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

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(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this chapter in such State, (iii) the economic and social benefits of such achievment, and (iv) an estimate of the date of such achievement; [and]

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs[.]; *and*

(F) for coastal and Great Lakes States, a description of—

(i) the activities undertaken to establish and implement water quality standards based upon biological criteria for coastal waters within the State; and

(ii) the activities to develop and implement pollution control measures pursuant to the State's coastal water quality protection program under section 1414(n) of this title.

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33 U.S.C. 1319

§ 1319. Enforcement

(a) STATE ENFORCEMENT; COMPLIANCE ORDERS.—

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(7) Whenever on the basis of any information the Administrator finds that a coastal State has (A) failed to comply with the requirements of section 1313(d), or (B) failed to develop, implement, or enforce a coastal water quality protection program under section 1314(n), the Administrator shall issue an order requiring the State to comply with such section or requirement, or shall commence a civil action in accordance with subsection (b).

* * * * * * *

(h) Notwithstanding any limitation on the amount of a penalty under this section, any penalty assessed by the Administrator of a court in a civil action against a person discharging pollutants into coastal waters for a violation of applicable effluent limitations or other permit requirements shall, where possible, be in an amount adequate to eliminate any economic benefit or savings, including interest, that may have accrued to that person as a result of the violation.

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33 U.S.C. 1322(k)

§ 1322. Marine sanitation devices

(k)*(1)* ENFORCEMENT AUTHORITY.—The provisions of this section shall be enforced by the Secretary of the department in which the

Coast Guard is operating and he may utilize by agreement, with or without reimbursement, law enforcement officers or other personnel and facilities of the Administrator, other Federal agencies, or the States *or political subdivisions thereof* to carry out the provisions of this section. The provisions of this section may also be enforced by a State.

(2)(A) A Governor may request in writing that the Secretary enter into, and the Secretary may enter into, a cooperative agreement with the Governor that will authorize the State or its political subdivisions to enforce the requirements of this section. The request shall be accompanied by whatever additional documentation the Secretary considers necessary to assess the ability of the state or its political subdivisions to enforce this section fairly and efficiently.

(B) The Secretary shall respond to a written request of a Governor under this paragraph not later than 180 days after receiving the request. If the Secretary denies the request, the Secretary shall describe fully the reasons for the denial and provide the Governor an opportunity to revise the request to the satisfaction of the Secretary.

(C) If the Secretary enters into an agreement with a Governor under this subsection (including a cooperative agreement under this paragraph), such agreement shall authorize the State or its political subdivisions to assess the penalties authorized by this section. Any penalties so assessed shall be retained by the State or a political subdivision thereof to further the purposes of this section.

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33 U.S.C. 1343 (a), (b), and (c)

§ 1343. Ocean discharge criteria

[(a) ISSUANCE OF PERMITS.—No permit under section 1342 of this title for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 1342 of this title if the Administrator determines it to be in the public interest.

[(b) WAIVER.—The requirements of subsection (d) of section 1342 of this title may not be waived in the case of permits for discharges into the territorial sea.]

(a) Except in compliance with the guidelines issued under subsection (c), no permit may be issued or renewed under section 1342 for a discharge into—

(1) estuaries nominated under section 320;

(2) the oceans; or

(3) any other navigable waters at the discretion of the Administrator.

(b) Subsection (d)(2) of section 1342 may not be waived for permits for discharges into estuaries nominated under setion 1330 or the territorial sea, and any objections made by the Administrator under that section shall be subject to judicial review under chapter 7 of title 5, United States Code.

(c) GUIDELINES FOR DETERMINING DEGRADATION OF WATERS.—(1) The Administrator shall, within one hundred and eighty days after October 18, 1972 (and from time to time thereafter), promulgate guidelines for determining the degradation of the [waters of the territorial seas, the contiguous zone, and the oceans] *estuaries nominated under section 1330, and the oceans*, which shall include:

(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

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33 U.S.C. 1343(c)(2)

§ 1343. Ocean discharge criteria

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[(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 1342 of this title.]

(2) No permit may be issued under section 1342—

(A) if the applicant for the permit has failed to demonstrate the need for the discharge and the lack of reasonable alternatives to it; or

(B) for any discharge for which insufficient information exists to determine the environmental impact of the discharge based on the guidelines published under this subsection, taking into account the national goals in section 101 of this Act.

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33 U.S.C. 1314

§ 1314. Information and guidelines

(a) CRITERIA DEVELOPMENT AND PUBLICAITON.—(1) The Administrator, after consultation with appropriate Federal and State agencies, *including the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration*, and other interested persons, shall develop and publish, within one year after October 18, 1972 (and from time to time thereafter revise) criteria for water quality, *including coastal water quality,* accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

* * * * * * *

(8) INFORMATION ON WATER QUALITY CRITERIA.—The Administrator, after consultation with appropriate State agencies and within 2 years after February 4, 1987, *and from time to time thereafter* shall develop and publish information on methods for establishing and measuring water quality criteria for toxic pollutants *and other pollutants that may pose risks to coastal and Great Lakes water quality,* on other bases than pollutant-by-pollutant criteria, including biological monitoring and assessment methods.

(9)(A) within 6 months after the effective date of this paragraph, the Administrator shall submit to the Committee on Environment and Public Works of the Senate, the Committee on Public Works and Transportation of the House of Representatives, and the Committee on Merchant Marine and Fisheries of the House of Representatives a detailed 5 year schedule for developing and revising criteria for pollutants which pose the greatest risk to coastal waters. In developing the schedule the Administrator shall consult with the Under Secretary of Commerce for Oceans and Atmosphere and the Governors of affected coastal States. The plan shall provide, among other matters, for the issuance within 2 years of new or revised criteria for pollutants of particular concern, including for—

(i) hexachlorobenzene;
(ii) pentachlorophenol;
(iii) fluorene;
(iv) phenanthrene;
(v) anthracene;
(vi) fluoranthene;
(vii) pyrene;
(viii) benzo(a)pyrene;
(ix) cadmium;
(x) chromium;
(xi) copper;
(xii) cyanide;
(xiii) lead;
(xiv) mercury;
(xv) nickel; and
(xvi) zinc;

(B) Within 2 years after the effective date of this paragraph and from time to time thereafter, the Administrator shall develop and publish biological criteria and sediment criteria for assessing coastal water quality that will provide a reliable complement to the pollutant-specific criteria published under this section.

* * * * * * *

(b) EFFLUENT LIMITATION GUIDELINES.—For the purpose of adopting or revising effluent limitations under this chapter the Administrator shall, after consultation with appropriate Federal and State agencies, *including the United States Fish and Wildlife Service and the National Oceanic and Atmospheric Administration,* and other interested persons, publish within one year of October 18, 1972, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

* * * * * * *

(n) COMPREHENSIVE COASTAL WATER QUALITY PROTECTION PROGRAMS.—

(1) IN GENERAL.—Within 30 months after the effective date of this section, each coastal State shall develop an enforceable coastal water quality protection program for restoring and protecting coastal water quality and achieving and maintaining designated uses. The program shall build on the information contained in the report of the State under section 1315(b), and shall build upon and incorporate the requirements applicable to coastal waters under subsection (1) of this section, sections 1313(d), 1329, and 1330 of this title and Section 306B of the Coastal Zone Management Act of 1972. The program shall be developed, submitted, and implemented jointly by the State water quality authorities, the State coastal zone management authorities and other appropriate State and local officials.

(2) PROGRAM CONTENTS.—The coastal water quality program required by this section shall—

(A) identify from time to time, but in no case less often than once every 3 years—

(i) those coastal waters for which applicable water quality standards or designated uses cannot reasonably be expected to be achieved or maintained, and

(ii) those coastal waters that, although currently meeting applicable water quality standards and protecting designated uses, are nonetheless threatened by reasonably foreseeable increases in pollutant loadings from new or expanding sources of pollution;

(B) for those coastal waters identified under subparagraph (A), identify and implement the enforceable pollution control measures (including water quality based effluent limitations and best management practices) applicable to point and nonpoint sources of pollution, that based upon the best scientific information available are necessary to achieve and maintain coastal water quality standards and protect designated uses, utilizing where appropriate the control strategies of subsection (1), approved programs under section 1329, approved plans under section 1330, and the authorities of section 306B of the Coastal Zone Management Act of 1972;

(C) target those high priority coastal waters requiring additional intensive efforts beyond those requested by subparagraph (B), and develop and implement detailed remedial programs for those waters consisting of load and wasteload allocations developed and implemented pursuant to section 1313(d) of this Act and section 306B of the Coastal Zone Management Act of 1972;

(D) provide for an enforceable system for allocating and exchanging discharge credits and pollution offsets among point sources and between point and nonpoint sources of pollution into coastal waters, that—

(i) promotes an efficient pollution reduction program among all sources of pollutants;

(ii) requires that for any increase in a point source loading secured through such exchanges between point

and nonpoint sources there is at least a two-fold reduction in loadings from those nonpoint sources;

(iii) is compatible with the antidegradation requirements of this Act and ensures that no net increases in pollution loadings will occur as a result of any such trade or exchange;

(iv) ensures full compliance with the technology-based effluent limitations established under section 1211(b);

(v) places the burden of proof on compliance with these requirements with the participants in any such trade or exchange; and

(vi) otherwise provides the necessary mechanisms to ensure compliance;

(E) establish a system whereby the Governor of the coastal State, or any other appropriate State authority, shall certify that the issuance or renewal of any discharge permits, and the undertaking of any other activities that are subject to the pollution control measures identified pursuant to subparagraph (B) or (C), complies with and is fully consistent with such pollution control measures;

(F) ensures ample opportunity for public participation in all elements of the program; and

(G) establishes mechanisms to improve coordination among State officials and State and local officials responsible for land use programs and permitting, water quality planning and permitting, habitat protection, and living resource management, through the use of joint project reviews, interagency certifications, memoranda of agreements, and other mechanisms.

(3) PROGRAM APPROVAL.—(A) No later than 2½ years after the effective date of this section, each coastal State, acting through its water quality and coastal zone authorities jointly, shall submit to the Administrator and the Under Secretary the program required by this section. The Administrator and the Under Secretary shall jointly approve the program if they find it meets the requirements of this section. If the proposed program does not meet the requirements, the Administrator and the Under Secretary shall promptly inform the State of the modifications that are necessary to meet the requirements and provide a reasonable time, not to exceed 6 months, within which the modifications may be made.

(B) All applications from States for grants and other assistance pertaining to coastal waters under this section, section 1329, or 1330 of this title, or section 306B of the Coastal Zone Management Act of 1972 shall describe in detail the manner in which State water quality, coastal zone, and other appropriate officials will use such assistance to implement the program required by this section.

(C) The Administrator and the Under Secretary shall not provide any Federal assistance to a coastal State under this title or the Coastal Zone Management Act of 1972 to implement section 1329 or 1330 of this title or section 306B of the Coastal Zone Management Act of 1972 with respect to coastal waters if that

State fails to submit an approvable coastal water quality protection program under this section within 3 years after the effective date of this section, except that this prohibition shall terminate with respect to that State upon the approval of a program for the State.

(4) DEFINITIONS.—In this subsection—

(A) the term "coastal waters" means (i) the waters of the Great Lakes under the jurisdiction of the United States, including their connecting waters, harbors, bays, wetlands, and marshes; (ii) those portions of rivers, streams, and other bodies of water having unimpaired connection with the open sea up to the historic head of tidal influence, including salt wetlands, coastal and intertidal areas, bays, harbors and lagoons; and (iii) waters of the territorial sea of the United States;

(B) the term "coastal water quality" includes the physical, chemical, and biological parameters that relate to the health and integrity of coastal aquatic ecosystems; and

(C) the term "Under Secretary" means the Under Secretary of Commerce for Oceans and Atmosphere.

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33 U.S.C. 1341(a)(1)

§ 1341. Certification

(a) COMPLIANCE WITH APPLICABLE REQUIREMENTS; APPLICATION; PROCEDURES; LICENSE SUSPENSION.—(1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 1311(b) and 1312 of this title, and there is not an applicable standard under sections 1316 and 1317 of this title, the State shall so certify, except that any such certification shall not be deemed to satisfy section 1371(c) of this title. Such State or interstate agency *shall consult with appropriate State and Federal fish and wildlife and coastal zone management authorities on the water quality impacts of the proposed license or permit, and* shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this sub-

section shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

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33 U.S.C. 1365

§ 1365. Citizen suits

(a) AUTHORIZATION; JURISDICTION.—Except as provided in subsection (b) of this section and section 1319 (g)(6) of this title, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or *(C) the requirements of section 1314(n), or*

* * * * * * *

(f) EFFLUENT STANDARD OR LIMITATION.—For purposes of this section, the term "effluent standard or limitation under this chapter" menas (1) effective July 1, 1973, an unlawful act under subsection (a) of section 1311 of this title; (2) an effluent limitation or other limitation under section 1311 or 1312 of this title; (3) standard of performance under section 1316 of this title; (4) prohibition, effluent standard or pretreatment standards under section 1317 of this title; (5) certification under section 1341 of this title; (6) a permit or condition thereof issued under section 1342 of this title, which is in effect under this chapter (including a requirement applicable by reason of section 1323 of this title); [or] (7) a regulation under section 1345(d) of this title[.], *or (8) the requirements of section 1314(n) of this title.*

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33 U.S.C. 1369(b)

§ 1369. Administrative procedure and judicial review

(b) REVIEW OF ADMINISTRATOR'S ACTION; SELECTION OF COURT; FEES.—(1) Review of the Administrator's action (A) in promulgating any standard of performance under section 1316 of this title, (B) in making any determination pursuant to section 1316(b)(1)(C) of this title, (C) in promulgating any effluent standard, prohibition, or pretreatment standard under section 1317 of this title, (D) in making any determination as to a State permit program submitted under section 1342(b) of this title, (E) in approving or promulgating any effluent limitation or other limitation under section 1311, 1312, 1316, or 1345 of this title, (F) in issuing or denying any permit under section 1342 of this title, [and] (G) in promulgating any individual control strategy under section 1341(*l*) *and (H) approving a*

State coastal water quality protection program under section 1314(o), of this title, may be had by any interested person in the Circuit Court of Appeals of the United States for the Federal judicial district in which such person resides or transacts business which is directly affected by such action upon application by such person. Any such application shall be made within 120 days from the date of such determination, approval, promulgation, issuance or denial, or after such date only if such application is based solely on grounds which arose after such 120th day.

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33 U.S.C. 1256(f)

§ 1256. Grants for pollution control programs

(f) CONDITIONS.—Grants shall be made under this section on condition that—

(1) Such State (or interstate agency) files with the Administrator within one hundred and twenty days after October 18, 1972 *and from time to time thereafter*:

(A) a summary report of the current status of the State pollution control program, including the criteria used by the State in determining priority of treatment works; and

* * * * * * *

(3) Such State (or interstate agency) submits within one hundred and twenty days after October 18, 1972, and before October 1 of each year thereafter for the Administrator's approval its program for the prevention, reduction, and elimination of pollution in accordance with purposes and provisions of this chapter in such form and content as the Administrator may prescribe, *including a description of actions taken by the State in fulfilling the requirements of section 1314(n).*

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33 U.S.C.1411(a)

§ 1411. Prohibited acts

(a) Except as may be authorized by a permit issued pursuant to section 1412 or section 1413 of this title, and subject to regulations issued pursuant to section 1418 of this title,

(1) no person shall transport *any material* from the United States, *for any purpose that includes dumping it into ocean waters or dump any material into ocean waters,* and

(2) in the case of a vessel or aircraft registered in the United States or flying the United States flag or in the case of the United States department, agency, or instrumentality, no person shall transport *any material* from any location *for any purpose that includes dumping it into ocean waters or dump any material into ocean waters*

[any material for the purpose of dumping it into ocean waters].

33 U.S.C. 1412(f)

§ 1412. Dumping permit program

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(f) The Administrator may prohibit the issuance of permits under this section for the dumping of material which does not comply with the criteria established under subsection (a) relating to the effects of ocean dumping on the marine environment.

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33 U.S.C. 1415

§ 1415. Penalties

(a) ASSESSMENT OF CIVIL PENALTY BY ADMINISTRATOR; REMISSION OR MITIGATION; COURT ACTION FOR APPROPRIATE RELIEF.—Any person who violates any provision of this subchapter, or of the regulations promulgated under this subchapter, or a permit issued under this subchapter shall be liable to a civil penalty of not more than [$50,000 for each violation to be assessed by the Administrator] *$75,000 for each violation to be assessed by the Administrator, except the maximum amount of any penalty under this paragraph shall not exceed $200,000.* In addition, any person who violates this subchapter or any regulation issued under this subchapter by engaging in activity involving the dumping of medical waste shall be liable for a civil penalty of not more that $125,000 for each violation, to be assessed by the Administrator after written notice and an opportunity for a hearing. No penalty shall be assessed until the person charged shall have been given notice and an opportunity for a hearing of such violation. In determining the amount of the penalty, the gravity of the violation, prior violations, and the demonstrated good faith of the person charged in attempting to achieve rapid compliance after notification of a violation shall be considered by said Administrator. For good cause shown, the Administrator may remit or mitigate such penalty. Upon failure of the offending party to pay the penalty, the Administrator may request the Attorney General to commence an action in the appropriate district court of the United States for such relief as may be appropriate.

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(i) Notwithstanding any limitation on the amount of a penalty under this section, in assessing any penalty in a civil action for a violation under this section, the Administrator or the court shall seek where possible to assess a penalty in an amount sufficient to eliminate any economic benefit or savings, including interest, that may have accrued to the violator as a result of the violation.

(j) From the sums recovered as penalties or fines under this title, the Administrator may permit the payment of no more that $10,000 to any person who furnished information which leads to an administrative finding of liability, civil judgment, or criminal conviction under this title.

33 U.S.C. 1330

§1330. National estuary program

(a) MANAGEMENT CONFERENCE.—

* * * * * * *

(b) PURPOSES OF CONFERENCE.—The purposes of any management conference convened with respect to an estuary under this subsection shall be to—

(1) assess trends in water quality, natural resources, and uses of the estuary;

(2) collect, characterize, and assess data on toxics, nutrients, and natural resources within the estuarine zone to identify the causes of environmental problems;

(3) develop the relationship between the inplace loads and point and nonpoint loadings of pollutants to the estuarine zone and the potential uses of the zone, water quality, and natural resources;

(4) develop a comprehensive conservation and management plan, *within 5 years after the date on which the management conference is convened,* that recommends priority corrective actions and compliance schedules addressing point and nonpoint sources of pollution to restore and maintain the chemical, physical, and biological integrity of the estuary, including restoration and maintenance of water quality, a balanced indigenous population of shellfish, fish and wildlife, and recreational activities in the estuary, and assure that the designated uses of the estuary are protected;

* * * * * * *

[(e) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for a period not to exceed 5 years. Such conference may be extended by the Administrator, and if terminated after the initial period, may be reconvened by the Administrator at any time thereafter, as may be necessary to meet the requirements of this section.

[(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

[(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve such plan if the plan meets the requirements of this section and the affected Governor or Governors concur.

[(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, such plan shall be implemented. Funds authorized to be appropriated under subchapters II and VI of this chapter and section 1329 of this title may be used in accordance with the applicable requirements of this chapter to assist States with the implementation of such plan.

[(g) GRANTS.—

[(1) RECIPIENTS.—The Administrator is authorized to make grants to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other puiblic or nonprofit private agencies, institutions, organizations, and individuals.

[(2) PURPOSES.—Grants under this subsection shall be made to pay for assisting research, surveys, studies, and modeling and other technical work necessary for the development of a conservation and management plan under this section.

[(3) FEDERAL SHARE.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of such research, survey, studies, and work shall be made on condition that the non-Federal share of such costs are provided from non-Federal sources.]

(e) PERIOD OF CONFERENCE.—A management conference convened under this section shall be convened for a period of at least 10 years. The Administrator may extend a conference after that period for an additional 5 years if the affected Governor or Governors concur in the extension and the extension is necessary to meet the requirements of this section.

(f) APPROVAL AND IMPLEMENTATION OF PLANS.—

(1) APPROVAL.—Not later than 120 days after the completion of a conservation and management plan and after providing for public review and comment, the Administrator shall approve the plan if—

(A) it meets the requirements of this section;

(B) it specifies the implementation responsibilities, including funding responsibilities and implementation schedules, of the Federal Government and of State and local governments that participated in development of the plan; and

(C) the affected Governor or Governors concur.

(2) IMPLEMENTATION.—Upon approval of a conservation and management plan under this section, the Administrator shall ensure that the Federal responsibilities and commitments under the plan are complied with and implemented. The Administrator, in conjunction with the management conference, shall—

(A) oversee and provide assistance to the management conference for implementation of the plan;

(B) coordinate Federal and State programs necessary for implementing the plan;

(C) make recommendations to the management condference on enforcement and technical assistance activities necessary to ensure compliance with and implementation of the plan;

(D) collect and make available to the public publications and other forms of information relating to implementation of the plan;

(E) make plan implementation grants under subsection (g); and

(F) provide administrative and technical support to the management conference.

(3) LOCAL OFFICE.—The Administrator may, on the recommendation of and in cooperation with the management conference, establish a local office of the Environmental Protection Agency to assist the Administrator in fulfilling the requirements of this subsection.

(4) FUNDING.—Funds authorized to be appropriated under section 1387, section 1329, and subsection (i)(2) of this section may

be used in accordance with the applicable requirements of this Act to assist States with the implementation of a conservation and management plan under this section.

(g) GRANTS.—

(1) RECIPIENTS.—The Administrator may make grants under this subsection to State, interstate, and regional water pollution control agencies and entities, State coastal zone management agencies, interstate agencies, other public or nonprofit private agencies, institutions, organizations, and individuals.

(2) PURPOSES.—Grants under this subsection shall be made for—

(A) development of conservation and management plans under this section, including research, surveys, studies, modeling, and other technical work necessary for the development of a plan; and

(B) implementation of conservation and management plans, including any additional research, planning, enforcement, and citizen involvement and education activities necessary to improve plan implementation.

(3) FEDERAL SHARE.—

(A) IN GENERAL.—The amount of grants to any person (including a State, interstate, or regional agency or entity) under this subsection for a fiscal year shall not exceed 75 percent of the costs of research, survey, studies, and work carried out with the grant.

(B) CITIZEN INVOLVEMENT AND EDUCATION GRANTS.—The amount of grants to any person under this subsection for a fiscal year for citizen involvement and education activities shall not exceed 95 percent of the costs of the activity.

(C) NON-FEDERAL SHARE.—All grants under this subsection shall be made on the condition that the non-Federal share of the costs of activities carried out with the grants are provided from non-Federal sources.

* * * * * * *

[(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Administrator not to exceed $12,000,000 per fiscal year for each of fiscal years 1987, 1988, 1989, 1990, and 1991 for—

[(1) expenses related to the administration of management conferences under this section, not to exceed 10 percent of the amount appropriated under this subsection;

[(2) making grants under subsection (g) of this section; and

[(3) monitoring the implementation of a conservation and management plan by the management conference or by the Administrator, in any case in which the conference has been terminated.

The Administrator shall provide up to $5,000,000 per fiscal year of the sums authorized to be appropriated under this subsection to the Administrator of the National Oceanic and Atmospheric Administration to carry out subsection (j) of this section.]

(i) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Administrator—

(1) not to exceed $20,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995, for—

(A) expenses related to the administration of management conferences under this section, except that not more than 10 percent of amounts appropriated under this paragraph may be used for that purpose; and

(B) making conservation and management plan development grants under subsection (g)(2)(A); and

(2) not to exceed $20,000,000 for each of fiscal years 1991, 1992, 1993, 1994, and 1995, for making conservation and management plan implementation grants under subsection (g)(2)(B).

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33 U.S.C. 2239

[§ 2239. Alternatives to mud dump for disposal of dredged material

[(a) DESIGNATION OF ALTERNATIVE SITES.—Not later than three years after November 17, 1986, the Administrator of the Environmental Protection Agency shall designate one or more sites in accordance with the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C.A. § 1401 et seq.] for the disposal of dredged material which, without such designation, would be disposed of at the Mud Dump (as defined in subsection (g) of this section). The designated site or sites shall be located not less than 20 miles from the shoreline. The Administrator, in determining sites for possible designation under this subsection, shall consult with the Secretary and appropriate Federal, State, interstate, and local agencies.

[(b) USE OF NEWLY DESIGNATED SITE.—Beginning on the 30th day following the date on which the Administrator of the Environmental Protection Agency makes the designation required by subsection (a) of this section, any ocean disposal of dredged material (other than acceptable dredged material) by any person or governmental entity authorized pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C.A. § 1401 et seq.] to dispose of dredged material at the Mud Dump on or before the date of such designation shall take place at the newly designated ocean disposal site or sites under subsection (a) of this section in lieu of the Mud Dump.

[(c) INTERIM AVAILIBILITY OF LAWFUL SITES.—Until the 30th day following the date on which the Administrator of the Environmental Protection Agency makes the designation required by subsection (a) of this section, there shall be available a lawful site for the ocean disposal of dredged material by any person or governmental entity authorized pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C.A. § 1401 et seq.] to dispose of dredged material at the Mud Dump on or before the date of such designation.

[(d) DESIGNATION PLAN.—Not later than 120 days after November 17, 1988, the Administrator shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Public Works and Transportation of the House of Representa-

tives his plan for designating one or more sites under subsection (a) of this section. The plan shall specify the actions necessary to comply with subsection (a) of this section, the funding requirements associated with these actions, and the dates by which the Administrator expects to complete each of these actions. The plan also shall specify actions which the Administrator may be able to take to expedite the designation of any sites under subsection (a) of this section.

[(e) STATUS REPORTS.—Not later than one year after November 17, 1986 and annually thereafter until the designation of one or more sites under subsection (a) of this section, the Administrator of the Environmental Protection Agency shall submit a report to the Committee on Public Works and Transportation of the House of Representatives and the Committee on Environment and Public Works of the Senate describing the status of such designation.

[(f) FUTURE USE OF MUD DUMP RESTRICTED TO ACCEPTABLE DREDGED MATERIAL.—Notwithstanding any other provision of law, including any regulation, the Secretary shall ensure that, not later than the 30th day following the date on which the Administrator of the Environmental Protection Agency makes the designation required by subsection (a) of this section, all existing and future Department of the Army permits and authorizations for disposal of dredged material at the Mud Dump shall be modified, revoked, and issued (as appropriate) to ensure that only acceptable dredged material will be disposed of at such site and that all other dredged material determined to be suitable for ocean disposal will be disposed of at the site or sites designated pursuant to subsection (a) of this section.

[(g) DEFINITION OF ACCEPTABLE DREDGED MATERIAL.—For purposes of this section, the term "acceptable dredged material" means rock, beach quality sand, material excluded from testing under the ocean dumping regulations promulgated by the Administrator of the Environmental Protection Agency pursuant to the Marine Protection, Research, and Sanctuaries Act of 1972 [33 U.S.C.A. § 1401 et seq.] and any other dredged material (including that from new work) determined by the Secretary, in consultation with the Administrator, to be substantially free of pollutants.

[(h) DEFINITION OF MUD DUMP.—For purposes of this section, the term "Mud Dump" means the area located approximately 5¾ miles east of Sandy Hook, New Jersey, with boundary coordinates of 40 degrees 23 minutes 48 seconds N, 73 degrees 51 minutes 28 seconds W; 40 degrees 21 minutes 48 seconds N, 73 degrees 50 minutes 00 seconds W; 40 degrees 21 minutes 48 seconds N, 73 degrees 51 minutes 28 seconds W, and 40 degrees 23 minutes 48 seconds N, 73 degrees 50 minutes 00 seconds W.]

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